



EMPLOYMENT TRIBUNALS

Claimants: Mr S Balmont (C1) and Claimants 2-11

Respondent: Flogas Britain Limited

Heard at: Swansea

On: 26th and 27th June 2025

Before: Employment Judge H J Randall
Mrs A Burge
Mrs J Keene

REPRESENTATION:

Claimants: Mr M Puar (Counsel)

Respondent: Mr P Mitchell (Counsel)

REASONS

JUDGMENT having been sent to the parties on 18th July 2025, and written reasons having been requested by the Claimants, in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

The Complaints and issues

1. The Claimants complain that the Respondent offered an inducement to the Claimants, members of an independent trade union, which is recognised by the Respondent (GMB), where the sole or main purpose in making the offer was to achieve the prohibited result that the terms of employment related to pay would not be determined by collective agreement negotiated by, or on behalf of, GMB (s.145B TUL(C)RA 1992).

2. The issues for the tribunal are set out in the attached Appendix. They were finalized at the case management hearing on 19th August 2024.

Evidence

3. The tribunal had before it the following documentary evidence: a documents bundle (237 pages), witness statements of Peter Hill, Paul Turner, Sonia Morgan, and Ivan Trevor, a chronology, and a cast list.
4. On behalf of the Claimants we heard evidence on oath from:
 - 4.1 Peter Hill; and
 - 4.2 Paul Turner
5. On behalf of the Respondent we heard evidence on oath from:
 - 5.1 Sonia Morgan; and
 - 5.2 Ivan Trevor.
6. Number references in brackets [01] are to the documents bundle. References in brackets in the format [XX 01] are to paragraphs within witness statements.
7. Only findings of fact relevant to the issues, and those necessary for the tribunal to determine, have been referred to in this judgement. It has not been necessary, and neither would it be proportionate, to determine each and every fact in dispute. The tribunal has not referred to every document it read and/or was taken to in the findings below, but that does not mean it was not considered if the tribunal was taken to the document in evidence or as part of a reading list. The tribunal notified the parties at the outset of the hearing that they would only read documents that they were specifically referred to and would only read documents referred to in witness statements insofar as they were identified as being relevant to an issue in the case.

The law

8. These claims are brought under s.145B of the Trade Union Labour Relations (Consolidation) Act 1992 for Inducements relating to collective bargaining which states:
 - (1) *A worker who is a member of an independent trade union which is recognised... by his employer has the right not to have an offer made to him by his employer if–*

- a. *Acceptance of the offer, together with other workers' acceptance of offers which the employer also makes to them, would have the prohibited result, and*
- b. *the employer's sole or main purpose in making the offers is to achieve that result*

(2) The prohibited result is that the workers' terms of employment, or any of those terms, will not (or will no longer) be determined by collective agreement negotiated by or on behalf of the union.

9. Further, under s.145D:

- (2) On a complaint under section 145B it shall be for the employer to show what was his sole or main purpose in making the offers.*
- (3) On a complaint under section ... 145B, in determining any question whether the employer made the offer (or offers) or the purpose for which he did so, no account shall be taken of any pressure which was exercised on him by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so; and that question shall be determined as if no such pressure had been exercised.*
- (4) In determining whether an employer's sole or main purpose in making offers was the purpose mentioned in section 145B(1), the matters taken into account must include any evidence—*
 - a. *that when the offers were made the employer had recently changed or sought to change, or did not wish to use, arrangements agreed with the union for collective bargaining,*
 - b. *that when the offers were made the employer did not wish to enter into arrangements proposed by the union for collective bargaining...*

10. As to what constitutes an offer, the test we apply is whether a reasonable person in the position of the offeree would believe the offeror intended to be bound by the offer upon acceptance.

11. We have also considered the leading case of *Kostal UK Limited v Dunkley* [2021] UKSC 47, in which the Supreme Court considered the proper interpretation of s.145B TULRCA.

Findings of fact

12. At the material times it is agreed that the Claimants were all employed by the Respondent as drivers, based at its Llandarcy site. The Claimants were all members of the GMB Union.

13. It is agreed that by virtue of an agreement dated 3rd May 2022, GMB is recognised by the Respondent for the purposes of collective bargaining at Llandarcy. The procedural terms of such agreement provided at Clause 12:

“12.1 The pay anniversary date for Relevant Employees will be the 1st June.

12.2 A meeting will be convened mid April, each year to discuss pay review for the Relevant Employees, which shall be referred to as the Joint Negotiating Board (JNB). The Company will outline the result of its review at the JNB and both the Company and the Union are keen to secure full agreement at this stage so that any pay adjustments can be made promptly from the June payroll.

12.3 If a further meeting of the JNB needs to be held this will be reconvened as soon as reasonably possible with a view to achieving early agreement.

12.4 The Company will place details of the annual pay adjustment on Company Notice Boards. This communication will summarise the review and if appropriate will outline other changes [to} terms and conditions of employment.

12.5 In the unlikely event of the JNB not being able to agree the annual adjustment, a further meeting of the JNB shall be called as soon as possible (and within 10 days of the previous meeting). The Union’s full time official can be invited to this meeting and broaden debate by reference to the general national and local economic climate.

12.6 In the unlikely event of there still being no agreement, both parties will request ACAS to help find a settlement to the issues through conciliation. Both parties shall give such assistance to ACAS as is necessary to enable it to carry out the conciliation efficiently and effectively.

12.7 Discussions in respect of any additional benefits/incentives or changes to Company Policy (including changes to the grievance procedure and disciplinary policy and procedure) which may have an impact on financial arrangements outside of the annual pay review process, will be dealt with in the normal course of business through consultation with the Committee.”

14. In the year 2023, there was a delay in starting negotiations due to:

- 14.1 An ongoing grievance over pay which was heard in April 2023; and
- 14.2 Replacement of the Union's regional officer.
15. In June 2023 negotiations between the parties took place relating to pay for the 2023/24 period. During this time, the Respondent made an offer of a 7% increase to the GMB Union.
16. In the course of negotiations over the following months, 5 meetings were held between the R and the GMB regional organiser, Peter Hill, the last two of which were assisted by Acas involvement.
17. There are no notes of the last of those meetings, on 29th November 2023, however it is agreed evidence that in the course of the meeting it was agreed that:
- 17.1 Peter Hill would provide further rationale on the union's current proposal of a 10% increase by the end of the week (Friday 1st December 2023);
- 17.2 Further talks would take place in the week commencing 11th December 2023; and
- 17.3 Peter Hill informed the Respondent that the union was considering issuing notices for action short of strike but that this would not take place until after the next pay discussion.
18. Following the meeting, we find that:
- 18.1 On 1 December 2023, Peter Hill emailed Sonia Morgan confirming he was waiting on additional information and that the draft pay claim would be with her by close of pay 4 December 2023 [182-183].
- 18.2 On 4 December 2023, Peter Hill emailed Sonia Morgan providing further detail on the pay claim for 2024/25 [157].
19. On 5 December 2023 it is agreed that Adie Baker (Senior Organiser of the Union) emailed the Respondent to serve notice of intended strike action from 20th Dec to 3rd Jan, and action short of strike action from 3 to 10 January [175-179]. This was in relation to the pay dispute. The wording of the email attaching the notice included "*I sincerely hope that a resolution to this dispute can be achieved before the commencement of these dates*". We do not find that the serving of the notice was a change in position by the union; the intended action would post date the next pay discussion. The email stated that the union hoped resolution could be reached in advance of the intended action.
20. On 11th Dec 2023, Ivan Trevor (Managing Director of the Respondent) emailed what he described as a "straw man" letter to Paul Horton and Sonia Morgan, as a proposal

of a letter which could be sent to the Claimants. Within the letter was set out the history of the pay negotiation thus far, and the Respondent's proposal in respect of both the 2023 and 2024 reviews [184-187].

21. On 12th December 2023, Sonia Morgan emailed Peter Hill to cancel the scheduled pay negotiation meeting on 15th December and stated she would be in touch to set out the Respondent's proposal for the 2024 pay review [189].

22. On the same day, Andrew Hardwick (General Manager of SW) emailed Ivan Trevor, Sonia Morgan, and Paul Horton (senior management/leadership team), with subject GMB Update, concluding *"We are edging ever closer to a de-recognition position and let's hope the forthcoming days and weeks take us there"*. There is no reply to this email from the senior management team, either to agree or disagree with the view expressed by Mr Hardwick.

23. On 14th December 2023, Ivan Trevor wrote to the Claimants [198]. This was an amended version of the "straw man" letter sent internally between senior management on 11th December. This is the letter that forms the basis of the unlawful inducement claim. We make the following findings in respect of the letter:

23.1 The letter starts by seeking to *"set out the Company's views"* with a view to *"collectively ensuring your remuneration is fair and appropriate for the job that you do for us"*.

23.2 It continues under a number of side headings:

23.2.1 "Context" – setting out the history of the pay negotiations from the Respondent's point of view;

23.2.2 "Position today" – details the Respondent's view of the current situation being at an *"impasse"*;

23.2.3 "Proposal" – where it is said *"I am taking this opportunity of writing to you directly to explain our proposal, as I feel that we have exhausted our efforts to reach an agreement with the Union. Rather, we have set out below our view for 2024 as well as a position to close out 2023. The position set out below is subject to the important note at the end of this section."* The R then makes proposals in respect of both the 2023 and 2024 reviews.

23.3 At the end of the "Proposal" section is then contained *"For legal reasons, this is not a deal which we can offer directly to Union members until it has been agreed with the Union. Therefore, if you would like the terms proposed above to apply to you then you would either need to make it very clear to the Union that they need to agree to it by close on business on Monday 18th December"*

or end your Union membership. To be clear, we are not encouraging any colleague to end their Union membership - we respect each colleague's right to be a member of a union if they choose."

23.4 There is then a further "Conclusion" section which states *"Furthermore, I really hope that you find the proposal as set out above to be fair and reasonable, and something that allows us to break through the current impasse and move forward together to realise collective success. If you do, then please inform the Union of this and encourage them to agree to the proposal so that you can benefit from it - remember, they are there to represent your interests, so it is important that you let them know what you want."*

24. On the same day Sonia Morgan sent a copy of the "Proposal" section of the letter to Peter Hill [202].

25. On 15th December 2023, Peter Hill emailed Sonia Morgan expressing disappointment at the Respondent's actions in sending the letter on 14 December 2023 and its contents.

26. On 15th December Paul Horton sent an email to other members of the Respondent's senior leadership team which included *"The whole point of the letter was to remove Peter from the process and to make a proposal to our colleagues. We need to try and avoid at all costs letting Peter negotiate this deal up. We very much positioned this as a best and final offer, and it would be nice to hear from the colleagues first, once they have time to consider it and discuss it with their families before we entertain any further discussions with Peter."*

27. On 18th December 2023, Peter Hill emailed Sonia Morgan to make an offer for 2023/24 and there were subsequent pay discussions [209].

28. In February 2024, following agreement with the GMB, a pay deal for 2023/24 was implemented. Pay negotiations for 2024/25 started.

29. In May 2024 a pay deal for 2024/25 was agreed with the GMB.

Discussion and Conclusions

30. We address the agreed list of issues as follows.

1. Were the Claimants members of the GMB on 14th December 2023?

31. It is agreed that they were.

2. Was the GMB a recognised independent trade union by the Respondent?

32. It is agreed that it was.

3. If so, what were the procedural terms of the Voluntary Collective Agreement dated 3 May 2022?

33. The procedural terms are set out in Clause 12. This made provision for meetings for the discussion of pay review for relevant employees, and, in the event of failure to reach agreement, the assistance of ACAS.

34. Of relevance, we find that there was no express term as to at what point negotiations would be considered to be exhausted.

4. Had negotiations pursuant to that Voluntary Collective Agreement been exhausted [at the time the letter of 14th Dec was sent?

35. We find that they had not.

36. There was no express term as to the point at which negotiations would be considered exhausted.

37. There was no direct indication, in the form of written or oral communication from the R or Union that either party considered the negotiations to be exhausted.

38. The Respondent's own witnesses gave conflicting evidence on this point. In xx Sonia Morgan stated that negotiations had been exhausted by the time the letter of 14th December was disseminated, however Ivan Trevor stated in his witness statement that he was conscious in sending the letter not to make an offer unless pay negotiations had been exhausted.

39. The clear implication both of this statement by Mr Trevor, and the framing of the letter itself is that the negotiations had not been exhausted at the time the letter was sent.

40. As a result of this finding, issue 5 (If so, when had those negotiations become exhausted and for what years (i.e. 2023/24 and/or 2024/25)?) falls away.

6. Did the letter of 14 December 2023 constitute an offer to the Claimants within the meaning of s145B Trade Union and Labour Relations (Consolidation) Act 1992?

41. We have approached this by considering two questions, firstly whether the letter constituted an offer, and secondly whether the offer fell within the meaning of s.145B.

42. Did the letter constituted an offer?

- 42.1 We find that it did. The letter set out a proposal in respect of 2023 and 2024 pay reviews, which is followed by *“if you would like the terms proposed above to apply to you then you would either need to make it very clear to the Union that they need to agree to it by close on business on Monday 18th December or end your Union membership.”* We find that a reasonable person reading that letter would believe that if he either: persuaded his Union to agree to it; or ended his Union membership, then the Respondent intended to be bound by “the proposal” contained within the letter.
- 42.2 The Respondent witnesses gave evidence that only the proposal in respect of 2023 would be honoured if the member ended his union membership (2024 agreement for non-union members not yet having been reached), however we do not find that to be a reasonable interpretation of what was conveyed in this letter

43. Did the offer fall within the meaning of s.145B?

- 43.1 We find that there were in effect two offers made by the letter:
- 43.1.1 The first was that the proposal would apply to the offeree if the union agreed to it;
- 43.1.2 The second was that the proposal would apply to the offeree if the offeree ended his union membership.
- 43.2 In respect of the first offer, it is clearly not covered by the Act as it involves continued union negotiation.
- 43.3 In respect of this second offer, it was covered by the Act, because acceptance of the offer would have the result of the offeree ending his union membership, which would have the result that the offeree’s terms of employment would no longer be determined by collective agreement negotiated by or on behalf of the union (the prohibited result).

7. If so, what were the terms of the offer?

44. For the reasons given above, we find that the terms of the second offer within the letter were that if the member ended his union membership, the terms of the proposal would apply to him.

8. If it was an offer within the meaning of s.145B, would acceptance of that offer by the Claimants have had the result that the Claimants’ terms of employment

would not have been determined by collective agreement negotiated by or on behalf of the GMB?

45. For the reasons given above, we find that it would.

9. If so, has the Respondent shown that its sole or main purpose in making the offer was not to achieve that result?

46. We find that the Respondent has shown this, for two main reasons.

47. Firstly, by the time the letter was sent, negotiations had been going on for several months, with, in our view, both sides having become entrenched in their respective positions. It was open to the Respondent at that point to determine that negotiations under the voluntary agreement in respect of the 2023 pay review had been exhausted. Had it done so, it would have been open to the Respondent to make an offer directly to the members in respect of pay for 2023. Had the Respondent's sole or main purpose been to remove the union from negotiations, then this was a route open to the Respondent, which the Respondent did not take. The fact that the Respondent did not do this is evidence in favour of its purpose not being to achieve that result.

48. Secondly, we find that the tone and content of the letter viewed as a whole encourages the members to speak to and persuade the union to accept the Respondent's proposal on behalf of its members, in order to break the current "impasse". The conclusion of the letter is encouragement of the members speaking to the union if the members want to accept the proposal, so that the union can accurately reflect their interests. This is inconsistent with the letter's sole or main purpose being to prevent the union negotiating the terms of employment on behalf of the members.

49. In respect of the comments made by Andrew Hardwick on 12th December 2023, we do not find an evidential link between the views expressed by him and the purpose of the letter sent on 14th December 2023. The first draft of the letter was sent on 11th December 2023, in advance of Mr Hardwick's expressed views. There is no indication of agreement with those views by the senior leadership team, and the encouragement of the members to speak to the union in the conclusion of the letter does not accord with the views expressed by Mr Hardwick.

50. In addition, we do not interpret the email sent by Paul Horton on 15th December 2023 as indicating a purpose on behalf of the Respondent of circumventing the collective bargaining agreement as submitted by the Claimant. Where Mr Horton says *"The whole point of the letter was to remove Peter from the process and make a proposal to our colleagues"* we find that he meant removing Peter Hill as an individual from the process of the Respondent's proposal being relayed and explained to the Claimants, rather than the Union as a whole being removed from negotiations. To read that line otherwise would be at odds with both the content of the letter, and the final line of the passage in the email, in which Mr Horton refers to further discussions with Peter.

51. Having considered the evidence as a whole, we find that the sole or main purpose of the letter was the resolution of the pay negotiations, which had been going on for some time by that stage, and not to achieve the prohibited result.

Conclusion

52. As a result, we find that each of the Claimants' complaints fail, and are accordingly dismissed.

Employment Judge H J Randall
8th October 2025

Sent to the parties on:

27 October 2025
For the Tribunal Office:

Adam Holborn