EMPLOYMENT TRIBUNALS

Claimant: **Mr I Dickson**

Respondent: **Solair Ltd (in Voluntary Liquidation)**

JUDGMENT

The Employment Tribunal Procedure Rules 2024 – Rule 22

1. The respondent has failed to submit a response. In accordance with Rule 22 of with Rule 22 of the Employment Tribunal Procedure Rules 2024, the Tribunal has decided that a determination can be properly be made of the protective award claim on the available material.

2. The complaint of unfair dismissal has been struck out on the basis that it cannot be determined on the available material, is not being actively pursued and a fair hearing is no longer possible.

3. The respondent has failed to comply with section 188 of the Trade Union & Labour Relations (Consolidation) Act 1992 ("TULR(C)A") as to consultation about proposed dismissals.

4. The claimant's claim for a protective award is well-founded and succeeds. The Tribunal makes a protective award that the respondent shall pay renumeration to the claimant for the protected period specified in paragraph 5 below.

5. The protected period is 90 days from 25 September 2023.

6. The Recoupment Regulations apply to the award.

REASONS

1. This claim arises out of the same facts as claims 1306640/2023 and others which have already been concluded by way of Judgment and Reasons dated 21 March 2025. A copy of that Judgment and Reasons is annexed.

2. The facts of this claim are identical to those in claim 1306640/2023, save for the points about establishment and unfair dismissal below. Therefore, the facts and conclusions set out in the Judgment and Reasons dated 21 March 2025 are hereby incorporated into these Reasons.

3. The claimant presented his claim to the Tribunal on 20 December 2023, with ACAS early conciliation having started on 5 December 2023 and ended on 8 December 2023. The claim was therefore presented in time.

4. One difference between those claims and this one is that the claimant has indicated on his claim form that he worked from home. Under section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("TULR(C)A"), the duty to collectively consult arises where there is a proposal to dismiss as redundant 20 or more employees at one establishment. This raises the question as to whether or not Mr Dickson was one of 20 or more employees at the same establishment, given his specified location of home.

5. I wrote to the parties (and the Secretary of State) inviting submissions on this point. The respondent did not reply. The claimant replied, indicating that despite working from home, he did form part of the same establishment and referred to being off sick after having a heart attack out on site. The respondent did not reply.

6. I find on the balance of probabilities that whilst the claimant worked from home, he was nevertheless assigned to the same unit and/or entity as the other employees in question. His home was not a separate establishment and on balance of probabilities I find that it did not have a separate workforce, technical means or organisational structure such as to make it a separate establishment for the purposes of TULR(C)A.

7. In relation to the claimant's unfair dismissal complaint, the Tribunal wrote to the claimant by letter dated 27 October 2025, explaining that I was considering striking out that claim and inviting any objections. No objections were received and that complaint is now struck out. The claimant has not actively pursued that complaint, and it is not possible to have a fair hearing in respect of it (this complaint not being one that can be determined on the papers based on the information available).

Employment Judge Edmonds

12 December 2025

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

ANNEX TO THE JUDGMENT
(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 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 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 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, 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.