



# EMPLOYMENT TRIBUNALS

**Claimant:** (1) Mr T Boswell  
(2) Unite the Union

**Respondent:** (1) WH Marren Ltd in administration  
(2) The Secretary of State for Business, Energy and Industrial Strategy

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**Heard at:** Birmingham

**In chambers on 2 August 2018**

**Before:** Employment Judge Kelly

### **Representation**

**Claimants:** No attendance

**Respondents:** No attendance

### **JUDGMENT**

**The judgment of the Tribunal is that:**

The tribunal declares that the complaint that the first respondent failed to comply with a requirement of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 is well founded, and makes a protective award in respect of the first claimant and orders the respondent to pay to the first claimant remuneration for the protected period of 90 days beginning on 19 July 2017.

### **REASONS**

1. By a claim presented on 1 Nov 2017, the claimants claimed a protective award under s189 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULCRA).
2. The claim was considered on the papers. We considered the claim form and responses, together with information provided by the first claimant.
3. The first claimant was one of 48 employees at one establishment who were employed by the first respondent and the majority of whom, including the first claimant, were dismissed by reason of redundancy on 19 Jul 2017.

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4. There was no consultation about the proposed dismissals with appropriate representatives of any of the employees who may be affected by the proposed dismissals. The first respondent did not provide any meaningful information to the claimants. The first claimant was informed at a meeting with all 48 employees on 17 Jul 2017 that the first respondent was ceasing to trade and all employees were sent home.
5. We were not presented with any evidence that the affected employees were of a description in respect of which an independent trade union was recognized by their employer, and we find that there was no such recognition. The first respondent did not take steps to arrange an election of employee representatives. We were not given any evidence that there were existing employee representatives with authority to receive information and to be consulted about the proposed dismissals and we find that there were none.
6. The first respondent has not shown that there were special circumstances which rendered it not reasonably practicable for it to comply with any requirement of s188 TULCRA.
7. Under s189 TULCRA, the protected period is of such length as the Tribunal determines to be just and equitable having regard to the seriousness of the employer's default.
8. Taking into account the principles in *Susie Radin v GMB and ors 2004 ICR 839, CA*, we find the first respondent's default very serious given that no steps were taken to arrange an election of employee representatives, no information was provided (other than that the first respondent was ceasing to trade) and no consultation occurred. We have not been informed of any mitigating circumstances to justify a reduction in the protected period below the maximum 90 days.
9. In *Independent Insurance Co Ltd v Aspinall EAT 2011 ICR 1234*, it was held that an individual employee cannot claim a protective award on behalf of a class of employees.
10. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 do not apply.

Employment Judge Kelly  
2 August 2018