THE EMPLOYMENT TRIBUNALS

Claimants
Ms D Grace
Ms S Boyer

Respondent
Marton Country Club Ltd (in creditors voluntary liquidation)

JUDGMENT (Liability and Remedy)
Empolyment Tribunals Rules of Procedure 2013 –Rule 21

The claim under s 189 of the Trade Union and Labour Relations (Consolidation) Act 1992, as amended, (TULRCA) is well founded. I make a protective award in respect of the claimants who were two of over 20 dismissed as redundant on or after 19th October 2017 that the respondent pay to the claimants remuneration for the protected period which begins on 19th October 2017 nd is for 90 days. The Recoupment Regulations apply.

REASONS

1 The claimants presented a claim which was sent to the respondent, which is in liquidation care of the liquidators at the registered office A response form was due by 3rd April 2018 but none was received .I am required by rule 21 of the Employment Tribunals Rules of Procedure 2013 to decide on the available material whether a determination can be made and, if it can, obliged to issue a judgment which may determine liability and remedy. I consider the above judgment appropriate because the claim form gives sufficient information to enable me to find the claims proved on a balance of probability and to determine the length of the protected period in accordance with Suzie Radin v GMB [2004] ICR893

2 Section 188(1B) (a) defines classes or categories of people in respect of whom consultation must be with a recognised union , regardless of whether individuals are members of that union. In respect of them only the union must be consulted—no-one else. Similarly, if there is a class of employee in respect of which no Union is recognised, consultation must be with elected representatives, even if the individuals are members of a union. If it was necessary to consult elected representatives, and there are such people, only they can claim. If there were none individuals affected employees can claim (see Mercy-v-Northgate HR Ltd 2008 ICR 410).

3. The EAT in Independent Insurance-v-Aspinall 2011 ICR 1234 held a protective award in respect of an employer's failure to comply with its collective redundancy consultation obligations made in favour of an individual claimant cannot be extended to benefit other employees who, although similarly affected by the employer's failure, were not party to the proceedings brought by the claimant. In so holding, the EAT

confirmed TULCRA only allows trade union and employee representatives to obtain awards on behalf of a group of affected employees..

4. I am satisfied there was no recognised Trade Union, that more than 20 employees were dismissed at a single establishment and no election of representatives or consultation took place.

5. in Suzie Radin v GMB [2004] ICR893 Peter Gibson L.J. said

45. I suggest that ETs, in deciding in the exercise of their discretion whether to make a protective award and for what period, should have the following matters in mind:

(1) The purpose of the award is to provide a sanction for breach by the employer of the obligations in s. 188: it is not to compensate the employees for loss which they have suffered in consequence of the breach.

(2) The ET have a wide discretion to do what is just and equitable in all the circumstances, but the focus should be on the seriousness of the employer's default.

(3) The default may vary in seriousness from the technical to a complete failure to provide any of the required information and to consult.

(4) The deliberateness of the failure may be relevant, as may the availability to the employer of legal advice about his obligations under s. 188.

(5) How the ET assesses the length of the protected period is a matter for the ET, but a proper approach in a case where there has been no consultation is to start with the maximum period and reduce it only if there are mitigating circumstances justifying a reduction to an extent which the ET consider appropriate.

In other words the period is 90 days unless there are reasons for making it less . This applies where the consultation period is only 30 days because less than 100 are dismissed. A Company search shows liquidation was preceded by many months of voluntary arrangement so there is no reason consultation could not have taken place

T M Garnon EMPLOYMENT JUDGE
SIGNED BY EMPLOYMENT JUDGE ON 5th April 2018