EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Mr M Bryndza	AND	Princess Yachts Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Plymouth **ON** 17 April 2020
(Public Hearing by Telephone)

EMPLOYMENT JUDGE N J Roper

Representation
For the Claimant: In person
For the Respondent: Mr P Howarth, Solicitor

JUDGMENT

The Judgment of the Tribunal is that the Claimant's claim is struck out.

REASONS

1. This is the judgment following a preliminary hearing to determine whether the claimant's claim should be struck out on the grounds that it has no reasonable prospect of success, or whether the claimant should be ordered to pay a deposit as a condition of continuing with the claim because it has little reasonable prospect of success.
2. In this case the claimant Mr M Bryndza has brought a claim for a protective award. The claim is denied by the respondent.
3. I have considered the grounds of application and the response submitted by the parties. I have considered the oral and documentary evidence which it is proposed will be adduced at the main hearing. I have also listened to the factual and legal submissions made by and on behalf of the respective parties. I have not heard any oral evidence, and I do not make findings of fact as such, but my conclusions based on my consideration of the above are as follows.

4. The claimant's claim is based upon the following assertions. The respondent is a luxury yacht manufacturer based in Plymouth in Devon. The claimant Mr Maciej Bryndza is of Polish nationality, and during 2017 he was recruited in Poland to work for the respondent. The claimant was employed by the respondent in Plymouth as a Fit-Out Carpenter from 30 October 2017 until his summary dismissal on 5 September 2019.
5. The claimant asserts that more than a hundred employees were dismissed on or about that same day (5 September 2019), and they consisted of a significant number of trainees and/or those with less than two years' service with the respondent. The claimant was not a member of a recognised trade union during his employment with the respondent. The claimant asserts that the respondent is in breach of the collective consultation requirements and that he is entitled to a protective award. He says that he was informed that Unite the Union ("Unite") had either obtained a protective award, or alternatively were negotiating settlement agreements for their own members.
6. The claimant commenced the Early Conciliation process with ACAS on 3 December 2019 (Day A), and the Early Conciliation Certificate was issued on 4 December 2019 (Day B). He issued these proceedings seeking a protective award on 4 December 2019.
7. The respondent has submitted a response denying the claim, which put simply asserts that the respondent has a collective bargaining agreement with Unite, which is its sole recognised independent trade union for all of its shop-floor employees, that is to say manufacturing and structural employees engaged in production and fitting, which included the claimant as a fit-out carpenter. The respondent denies that any protective award has been made in favour of the affected employees, and asserts that it has had effective collective consultation with Unite. In these circumstances the claimant has no standing under the relevant legislation to bring a claim for a protective award on his own.
8. Having set out this background, I now apply the law.
9. The Employment Tribunal Rules of Procedure 2013 are in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 and are referred to in this judgment as "the Rules". Rule 37(1) provides that at any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on the grounds that it is scandalous, or vexatious, or has no reasonable prospect of success. Rule 39 provides that where at a preliminary hearing (under rule 53) the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party ("the paying party") to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument. Under Rule 39(2) the Tribunal shall make reasonable enquiries into the paying party's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.

10. The relevant law relating to protective awards is in the Trade Union and Labour Relations (Consultation) Act 1992 ("TULRCA").
11. Section 188(1) of TULRCA provides as follows: "Where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less, the employer shall consult about the dismissals all the persons who are appropriate representatives of any of the employees who may be affected by the proposed dismissals or may be affected by measures taken in connection with those dismissals". S188(1A) provides that "The consultation shall begin in good time and in any event – (a) where the employer is proposing to dismiss 100 or more employees as mentioned in subsection (1), at least 90 days, and (b) otherwise, at least 30 days, before the first of the dismissals takes effect.
12. S 188(1B) of TULRCA provides that: "For the purposes of this section the appropriate representatives of any affected employees are – (a) if the employees of a description in respect of which an independent trade union is recognised by their employer, representatives of the trade union, or (b) in any other case, whichever of the following employee representatives the employer chooses:- (i) employee representatives appointed or elected by the affected employees otherwise than for the purposes of this section who (having regard to the purposes for and the method by which they were appointed or elected) have authority from those employees to receive information and to be consulted about the proposed dismissals on their behalf; (ii) employee representatives elected by the affected employees, for the purposes of this section, in an election satisfying the requirements of section 188A(1)."
13. S 189 of TULRCA allows a complaint relating to failure to comply with these requirements to be brought to the Employment Tribunal, and refers to the making of a protective award. However, S189(1)(c) provides that: "Where an employer has failed to comply with a requirement of section 188 or section 188A a complaint may be presented to an employment tribunal on that ground – (c) in the case of failure relating to representatives of the trade union, by the trade union …
14. In this case I am satisfied that the claimant was an employee of a description in respect of which an independent trade union (namely Unite) was recognised by the respondent. In these circumstances, to the extent that the collective consultation requirements are engaged, the respondent is required by the relevant legislation to consult with the appointed representatives of Unite. If there is a failure to do so in accordance with the provisions of the legislation, then only Unite is empowered by s189(1)(c) to issue proceedings before the Employment Tribunal and to seek a protective award in favour of the affected employees. To the extent that they are successful in so doing, that protective award would apply to all affected employees, (including the claimant), and the benefit of that protective award would not be limited to members of Unite. However, by virtue of S189(1)(c), only the relevant independent trade union, namely Unite in this case, is entitled to bring that claim.

15. In these circumstances the claimant has no locus standi, that is to say he has no legal right to bring a claim for a protective award. Accordingly, in my judgment it is right to say that the claimant personally has no reasonable prospect of success in these proceedings. I therefore strike out his claim pursuant to Rule 37(1) because it has no reasonable prospect of success.

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Employment Judge N J Roper
Dated: 17 April 2020
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