



EMPLOYMENT TRIBUNALS

Claimants Mr T Johnson and others (see schedule)

Respondent: Redeem UK Limited (in administration)

HELD AT: Manchester (by CVP) **ON:** 30 July 2021

BEFORE: Employment Judge Phil Allen
(sitting alone)

REPRESENTATION:

Claimants: Each in person

Respondent: Did not attend and was not represented

JUDGMENT

The Tribunal having heard evidence from most of the claimants in a hearing conducted remotely by CVP technology, the Judgment of the Tribunal is that:

1. The respondent failed to consult with the claimants as persons who may be affected by proposals to dismiss, or measures taken in connection with the dismissal of twenty or more employees, in breach of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992.
2. Under Section 189(1)(d), (2), (3) and (4) of the Trade Union and Labour Relations (Consolidation) Act 1992, the Tribunal makes a protective award in respect of each of the claimants, and the respondent is ordered to pay remuneration to each claimant for a protected period of 90 days beginning on 7 July 2020.
3. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply to this award.
4. The respondent breached the contracts of employment of each of the claimants listed in schedule 2 (that is all of them, save for Mr Wolstenholme) by not giving the claimant the period of notice of the termination of their employment to which they were entitled.
5. The respondent is ordered to pay to each of those claimants (save for Mr Wolstenholme) the amount recorded in the second schedule to this Judgment as damages for breach of contract.

REASONS

1. All of the claimants claimed a protective award in respect of breach of the collective consultation requirements. Responses were presented to the claims by the respondent, which is in administration, but those response were brief and confirmed that the claimants were dismissed on the dates asserted because the company ceased to trade.
2. The consent of the administrator had been provided for the stay to be lifted and the claims to proceed.
3. The hearing was conducted by CVP remote video technology. It was attended by all of the claimants. They each gave evidence under oath, save for Mr Wolstenhlome (who had technical issues which meant that he was only able to attend the hearing briefly and was not able to give evidence under oath).
4. The Tribunal makes the following findings:
 - a. The respondent carried on business in Macclesfield;
 - b. There was no trade union recognised for collective bargaining, consultation or negotiation with the workforce;
 - c. The claimants were first notified that there was any issue in an email on 3 July 2020 and subsequently on 7 July 2020 when they were informed in a conference call that the company had been placed into administration. There was no collective consultation undertaken and the employees were not invited to elect representatives.
 - d. Each of the claimants were informed that their employment terminated on 7 July 2020 (except for Mr Meakin and Mr Trueman). Approximately 82 employees at the establishment in Macclesfield were dismissed on, or shortly after, that date. The employment of Mr Meakin and Mr Trueman was terminated on 31 July 2020 (which was also the date they were given written notice of termination).
 - e. The first redundancy at the establishment occurred on 7 July 2020.
5. There was no proper warning or notice given to or consultation with the workforce. No employee representatives had been elected or appointed for any such consultation within Section 188A of the 1992 Act. The dismissals were put into effect without any consultation or advance notice.
6. In these circumstances, the respondent was in breach of the duty under Section 188 of the 1992 Act and the Tribunal makes an award under Section 189 in favour of the claimants for the maximum protected period of 90 days commencing on 7 July 2020.
7. The Claimants also each claimed damages for breach of contract in respect of notice. Each of the claimants was entitled to three months notice of the termination of their employment. No notice was provided. The respondent accordingly breached the contract of employment of each of the claimants when they were dismissed (save as recorded at paragraph 9 below).
8. The remedy for breach of contract is to put the claimant in the position which they would have been had their contract not been breached. That means that sums earned in mitigation of the loss arising from the breach must be taken into account before an award is made. Earnings and benefits received

Case No: 2408915/2020 & others (see schedule)

and payments made by the Secretary of State in respect of notice were established for each of the claimants (save as recorded at paragraph 9 below). As a result, the losses arising from the breach for each of the claimants was as follows:

- a. For Mr T Johnson, £3,984;
- b. For Miss T Cooper, £1,504;
- c. For Mr D Trueman, £2,813; and
- d. For Mr S Meakin, £3,399.

9. It was not possible to determine Mr Wolstenholme's claim for breach of contract as he was not able to attend the hearing and give evidence. Accordingly, his claim for breach of contract (notice) is not determined as part of this Judgment (but the Judgment does confirm that he is entitled to a protective award for failure to consult, as that claim was able to be determined on the evidence heard from the other claimants).

10. The respondent is advised of the provisions of Regulation 5 of the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996, such that, within 10 days of the decision in these proceedings being promulgated or as soon as is reasonably practicable, the respondent must comply with the provisions of Regulation 6 of the 1996 Regulations and, in particular, must supply to the Secretary of State the following information in writing:

- a. the name, address and national insurance number of every employee to whom the award relates; and
- b. the date of termination of the employment of each such employee.

11. The respondent will not be required to make payment under the protective awards made until it has received a recoupment notice from the Secretary of State or notification that the Secretary of State does not intend to serve a recoupment notice having regard to the provisions of Regulation 7(2). The Secretary of State must normally serve such recoupment notice or notification on the employer within 21 days of receipt of the required information from the first respondent.

NOTE

12. These claims all arise from the Administration of the respondent, and the necessary consent to the claims proceeding has been given.

13. A protective award is a two-stage process. The Tribunal at this stage makes no financial awards, but gives a judgment that each of the listed claimants are entitled to a protective award in the terms set out above. The claimants must then seek payment of their individual award from the respondent (or the Secretary of State), quantifying the same.

14. Failure to pay (should that occur), or any dispute as to the amount payable, then becomes a matter for a further separate claim under s.192 of the Trade Union and Labour Relations (Consolidation) Act 1992 for payment of the award.

Employment Judge Phil Allen
30 July 2021

Case No: 2408915/2020 & others (see schedule)

JUDGMENT SENT TO THE PARTIES ON
2 August 2021
AND ENTERED IN THE REGISTER

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

SCHEDULES TO THE JUDGMENT

Schedule 1

The claimants to which this Judgment applies (and their case numbers):

1. Mr T Johnson - 2408915/2020
2. Mr A Wolstenholme - 2408949/2020
3. Miss T Cooper – 2408972/2020
4. Mr D Trueman – 2409582/2020
5. Mr S Meakin – 2413270/2020

Schedule 2

The claimants for which it has been found that the respondent breached their contracts of employment by not giving notice or paying for the notice period required (and their case numbers) and the amount which the respondent must pay to each claimant as damages for breach of contract is:

1. Mr T Johnson - 2408915/2020 - £3,984.
2. Miss T Cooper – 2408972/2020 - £1,504.
3. Mr D Trueman – 2409582/2020 - £2,813.
4. Mr S Meakin – 2413270/2020 - £3,399.

Claimants: Mr T Johnson & Others

Respondent: Redeem UK Limited (In Administration)

**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 therefrom 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

Case No: 2408915/2020 & others (see schedule)

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.