



EMPLOYMENT TRIBUNALS

Claimant: Mrs K Clarke

Respondent: (1) FMG Repair Services Ltd
(2) Redde Northgate PLC
(3) Nationwide Accident Repair Services Ltd (in administration)

JUDGMENT

This was a determination on papers with no attendance by any party.

1. The Tribunal makes a protective award in favour of the Claimant and orders the third respondent to pay remuneration for a protected period of 90 days beginning on 4 September 2020.
2. There is no order requiring any party to pay or reimburse another party's costs or fees. Each party shall bear their own costs and fees.
3. The Employment Protection (Recoupment of Benefits) Regulations 1996 apply to this award.
4. This Judgment does not affect Mrs Clarke's continuing claims against the first and second respondents.

REASONS

1. The claimant was employed by the respondent as a home-based worker, working as part of its "Head Office" function.
2. On 4 September 2020, the claimant was dismissed by reason of redundancy.
3. The third respondent did not fully inform and consult with the claimant in accordance with the provisions of s.188 and s.188A Trade Union and Labour Relations (Consolidation) Act 1992 ("the Act"). The Head Office function was an establishment at which the respondent proposed to make 20 or more redundancies.

4. The claimant has raised her complaints as an individual (there being no relevant employee representatives) pursuant to section 189 of the Act seeking a protective award.
5. This matter has been determined on the papers in view of information sent in by the parties, and in line with a judgment issued in other cases involving workers assigned to the Head Office function of the business. If any party considers that Mrs Clarke is not entitled to a protective award, then they are reminded that they may apply for a reconsideration of the Judgment. Further information is contained in the leaflet provided alongside the Judgment.

Employment Judge Dunlop

Date: 18 January 2022

SENT TO THE PARTIES ON
21 January 2022

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FOR EMPLOYMENT TRIBUNALS

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**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.