



EMPLOYMENT TRIBUNALS

Claimant: Ms J Gabay

Respondent: Paperchase Products Limited (in Administration)

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

The claim for a protective award in accordance with section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 is unsuccessful.

REASONS

1. The claimant was employed by the respondent from 7 April 2008 until termination of her employment on 28 January 2021.
2. On 29 September 2020 the respondent proposed to dismiss as redundant 10 employees from a group of 27 employees. At least five employees were dismissed between 7 December 2020 to 26 December 2020.
3. During that process the claimant successfully obtained an alternative position and was not made redundant.
4. The respondent went into administration on 5 January 2021. On 28 January 2021 the claimant and 16 of her colleagues were made redundant with immediate effect as a result of the administration of the respondent.
5. Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 states as follows:

“(1). 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.

(1A). 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 45 days; and*
- (b) Otherwise at least 30 days before the first of the dismissals takes effect.*

(1B)

(2)

(3). In determining how many employees an employer is proposing to dismiss as redundant no account should be taken of employees in respect of whose proposed dismissals consultation has already begun.”

6. In the case of **UQ v Marclean Technologies SLU (C-300/19) ECJ**, the European Court of Justice determined that if, during the reference period, the aggregate number of dismissals reaches the threshold number then the duty to consult will apply in respect of all dismissals during the reference period.

7. The reference period for the claimant’s dismissal was 90 days and began on 28 January 2021.

8. The previous reference period was 90 days and began on 29 September 2020 and ended on 29 December 2020.

9. The duty to consult in accordance with section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 did not apply on 28 January 2021 because the respondent proposed to dismiss less than 20 employees during the reference period.

10. The claimant’s claim for a protective award in accordance with section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 is therefore unsuccessful.

Employment Judge Ainscough
Date: 29 June 2022

JUDGMENT SENT TO THE PARTIES ON
5 July 2022
AND ENTERED IN THE REGISTER

FOR THE TRIBUNAL OFFICE