



EMPLOYMENT TRIBUNALS

Claimants: Andy Butler and others (see schedule)
Respondent: Testerworld Limited (in administration)
Rule 96 party: Secretary of State for Business and Trade

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

1. The claimants' claims that the respondent failed to comply with the requirements of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 in respect of their dismissals are well founded.
2. The Tribunal orders the respondent, by way of protective award under section 189(3) of the 1992 Act, to pay to each of the claimants a payment equivalent to remuneration for the period of 90 days beginning on 9 May 2022.

Recoupment

3. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply to this award. The protected period is the period of 90 days beginning on 9 May 2022.

Reasons

1. Each of the claimants named in the schedule has made a complaint under section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 on the ground that the respondent failed to comply with a requirement of section 188 in respect of his or her dismissal. The respondent company's administrators have given consent for the claims to continue.
2. The respondent has not presented a response to the claims.
3. I have decided that a determination can properly be made of the complaints on the available material.
4. On the available material I am satisfied of the following.

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- a. As at 9 May 2022 the respondent was proposing to dismiss as redundant, within a period of 90 days or less, 20 or more employees who were assigned to carry out their duties at the respondent's depot at Hainge Park, Tividale, Oldbury.
- b. The claimants were employees of the respondent who may be affected by the proposed dismissals. They were assigned to carry out their duties at the respondent's depot at Hainge Park, Tividale, Oldbury. They were dismissed as redundant on 9 May 2022.
- c. For the purposes of section 188 Trade Union and Labour Relations (Consolidation) Act 1992, the respondent's depot at Hainge Park, Tividale, Oldbury was either an establishment in itself or it was part of a larger unit constituting an establishment. In order to determine the claimants' claims it is unnecessary for me to decide which of those two possibilities was in fact the case.
- d. The respondent was required to consult about the dismissals all the persons who were 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: section 188 Trade Union and Labour Relations (Consolidation) Act 1992. For the purposes of the consultation, the respondent was required to disclose in writing to the appropriate representatives the information set out at section 188(4) of the Act.
- e. The claimants were not employees of a description in respect of which an independent trade union was recognised by the respondent.
- f. There were no employee representatives appointed or elected by the affected employees otherwise than for the purposes of section 188, who had authority from those employees to receive information and to be consulted about the proposed dismissals on their behalf.
- g. There were no employee representatives elected by the affected employees, for the purposes of section 188, in an election satisfying the requirements of section 188A(1). The respondent did not invite the claimants to elect such representatives. The respondent did not consult with any of the claimants individually about the proposed redundancies.
- h. Each of the claimants is entitled to make a complaint under section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 on the ground that the respondent failed to comply with a requirement of section 188 in respect of his or her dismissal.
- i. The respondent failed to comply with the requirements of section 188 in respect of each of the claimants' dismissals.
- j. The respondent has not shown that there were special circumstances which rendered it not reasonably practicable for the employer to comply with any requirement of section 188.
- k. Each of the complaints was presented to the tribunal within the period of three months beginning with the date on which the claimant's dismissal took effect (taking into account section 292A).

5. The claimants' complaints under s189 are well founded.

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6. Section 189 provides as follows:
 - (2) If the tribunal finds the complaint well-founded it shall make a declaration to that effect and may also make a protective award.
 - (3) A protective award is an award in respect of one or more descriptions of employees—
 - (a) who have been dismissed as redundant, or whom it is proposed to dismiss as redundant, and
 - (b) in respect of whose dismissal or proposed dismissal the employer has failed to comply with a requirement of section 188, ordering the employer to pay remuneration for the protected period.
 - (4) The protected period—
 - (a) begins with the date on which the first of the dismissals to which the complaint relates takes effect, or the date of the award, whichever is the earlier, and
 - (b) is of such length as the tribunal determines to be just and equitable in all the circumstances having regard to the seriousness of the employer's default in complying with any requirement of section 188; but shall not exceed 90 days
7. I have determined that it is appropriate to make a protective award under section 189 in respect of each of the claimants.
8. In determining the length of the protected period I have had regard to the seriousness of the employer's default in complying with the requirements of section 188 and borne in mind guidance given in the case of *GMB v Susie Radin Ltd* [2004] EWCA Civ 180, [2004] IRLR 400.
9. I am satisfied on the material available that this is a case where there has been no consultation at all in relation to the claimants' proposed dismissals and there are no mitigating circumstances. Therefore, it is just and equitable that the length of the protected period in the case of each claimant should be the maximum of 90 days.

Employment Judge **Aspden**

Date: 6 December 2023

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Schedule of claimants

Claim number	Claimant
1302673/2022	Andy Butler
1302675/2022	Steven Cartwright
1302677/2022	Daniel Clarke
1302678/2022	Mark Clarke
1302679/2022	Robert Cole
1302680/2022	Mark Cottrell
1302681/2022	Lorna Coyle
1302682/2022	Jenny Coyle
1302684/2022	Klaudia Csorba
1302685/2022	Rob Cundy
1302686/2022	Steven Davis
1302687/2022	Lee Denigan
1302688/2022	Jessica Drury
1302689/2022	Vicki Drury
1302690/2022	Gail Dyer
1302691/2022	Chelsea Dyer
1302692/2022	Helen Eastwood
1302693/2022	Karen Esprey
1302694/2022	Martin Evans
1302695/2022	James Evans
1302696/2022	Wayne Fellows
1302697/2022	Nathan Fisher
1302698/2022	Liga Folkmane
1302699/2022	Willaim Gambon
1302700/2022	Kate Gravel
1302701/2022	Christopher Green
1302702/2022	Simone Green
1302703/2022	Elaine Grove
1302704/2022	Jacob Groves
1302705/2022	Gary Gwilt
1302707/2022	Jayne Hipkiss
1302708/2022	Colin Howarth
1302710/2022	Agnieszka Jachym
1302711/2022	Antony James
1302712/2022	Sukhjit Johal
1302714/2022	Baljinder Kaur
1302715/2022	Lynda Keating
1302716/2022	Mark Leader
1302717/2022	Patrycja Magiera
1302719/2022	Philip Mansell
1302720/2022	Jay Moore-walton
1302721/2022	Jordan Morris
1302722/2022	Paul Parker
1302723/2022	Sachin Patel
1302724/2022	Hitesh Patel
1302725/2022	Cosmin Popa
1302726/2022	Jayne Pratt

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1302727/2022	Trevor Priest
1302728/2022	Danielle Reay
1302729/2022	Aron Ryan
1302730/2022	Tracy Sankey
1302731/2022	Helen Scriven
1302732/2022	Alina Seputiene
1302733/2022	Garfield Sharpe
1302735/2022	Richard Simms
1302736/2022	Davinder Singh
1302737/2022	Mangveer Singh
1302738/2022	Nirmila Sisodia
1302739/2022	Elaine Squires
1302740/2022	Ralph Squires
1302741/2022	Marin Tabara
1302742/2022	Sunil Tarsem
1302743/2022	Helen Taylor
1302744/2022	Robert Taylor
1302745/2022	Jaqueline Thomas
1302746/2022	karen Turnbull
1302747/2022	Maria Walker
1302748/2022	Anthony Walker
1302749/2022	Gary Warmer
1302750/2022	kevin Wassell
1302751/2022	Maria West
1302752/2022	Karl Williams
1302753/2022	Lisa Williams
1302754/2022	Henry Williams
1302755/2022	Kiri Woodhouse
1302756/2022	Christopher Woollaston
1302757/2022	Mark Woolley
1302759/2022	Darren Bowker
1302760/2022	Daryl Bowker
1302762/2022	Aaron Bowker
1302764/2022	Philip Sharp
1302765/2022	Kulwant Kaur
1302766/2022	Mohammed Kabel
1302767/2022	Melanie Stallard