



# EMPLOYMENT TRIBUNALS

**Claimants:** (1) GMB and others (case 1302690/2023 and others)  
(2) Mr M McCue (case 1302822/2023)  
(3) Mr A Kulesza and others (case 1301829/2023 and others)

**Respondents:** (1) Wade Ceramics Ltd (in administration)  
(2) Secretary of State for Business and Trade

**Heard at:** Midlands West

**On:** 28 August 2024

**Before:** Employment Judge Faulkner (on the papers)

## JUDGMENT

1. In this Judgment (and in the Reasons below), “the Claimants” means those listed in the Schedule to it. For the avoidance of doubt, the term does not include the GMB.

2. The Claimants were employed by the First Respondent and were among at least 60 employees who were dismissed as redundant on 2 December 2022 and whose place of work was Bessemer Drive, Stoke on Trent, ST1 5GR. The First Respondent went into administration on 2 December 2022.

3. I declare that the complaints that the First Respondent failed to comply with the requirements of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 are well founded.

4. I make a protective award in respect of all the Claimants and order the First Respondent to pay to each of the Claimants remuneration for the protected period of 90 days beginning on 2 December 2022.

5. A Recoupment Notice is attached.

# REASONS

## Complaint

1. All of the Claims concern a single complaint by all of the Claimants that the First Respondent failed to comply with the requirements of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the Act”). The complaints were brought pursuant to section 189 of the Act. All of the Claims were presented within the statutory time limit.

2. The claimants in case numbers 1302690/2023 and others (“Claim 1”) are the GMB union and 23 individuals who it suggested are (or were at the relevant time) members of the union. They are represented by Simpsons Solicitors. It appears that Claim 1 included the individual claimants in case the Tribunal was not satisfied that the GMB was recognised by the First Respondent.

3. There were four other named prospective individual claimants in respect of whom ACAS issued a multiple Early Conciliation Certificate prior to the presentation of Claim 1 – namely Darren Adams, Reginald Harper, Nigel Joynson and William Moulton – but when the Tribunal asked that Simpsons Solicitors confirm the names of the claimants in that Claim, their names were not included in the resulting list.

4. Mr McCue is the sole claimant in case number 1302822/2023 (“Claim 2”). He is represented by Thompsons Solicitors.

5. The claimants in case numbers 1301829/2023 and others (“Claim 3”) were an additional 36 individuals. They are represented by Griffin Legal. Some of the claimants in Claim 3 are also claimants in Claim 1 – Annette Barker, Kathleen Mellor, and Philip Brown. I have therefore included them in the Schedule only under Claim 1.

6. There is a claimant with the name of Robert Dimond in both Claims 1 and 3. The respective representatives have provided different addresses for him, but I have assumed that it is the same individual, and have therefore included him in the Schedule only in respect of Claim 1. There was one other claimant named in the original list provided by Griffin Legal, namely Tom Gregory. His name was not however included in the latest list, provided in July 2024, and I have therefore assumed he is not a claimant within Claim 3.

7. No Response was presented by the First Respondent. I am satisfied that in respect of all three Claims the Administrators for the First Respondent have provided consent for them to proceed. The Second Respondent presented a Response that indicated it did not accept or resist the Claims. It set out a summary of the relevant law which it asked the Tribunal to consider.

## Hearing

8. As notified to the parties, this Hearing was conducted on the papers. There was therefore no appearance or representation by any of them. The Claimants provided the statements referred to below. My findings of fact that now follow are based on those statements, together of course with the Claim Forms and the

## **Facts**

9. It is not disputed that all of the Claimants were employed by the First Respondent at Bessemer Drive, Stoke on Trent, ST1 5GR.

10. In her statement dated 23 May 2024, Wendy Grievson of GMB Midlands said that she was the GMB representative for its members in Claim 1 (this was not all of the Claim 1 claimants). She went on to say that the GMB were recognised by the First Respondent at its workplace in Bessemer Drive, but did not say in relation to which categories of employees and then went on to say that there was no recognition agreement. It is not clear whether by that she meant that there was no written recognition agreement or that there was no such agreement at all. In his statement dated 16 April 2023, Mr McCue said that no trade union was recognised by the First Respondent, though in his Particulars of Claim he said that his trade union was not recognised. He did not say which union that was.

11. Whilst of course there can be recognition of a trade union without a written recognition agreement, given the ambiguity and lack of clarity in the evidence, I find that it is not established on the facts before me that the GMB, or indeed any trade union, was recognised by the First Respondent in relation to any category of employees.

12. All of the Claimants were dismissed on the appointment of the First Respondent's Administrators, with effect from 2 December 2022.

13. The First Respondent did not engage in any consultation with the Claimants, or with the GMB on behalf of any of them, or with any other employee representatives of any description, about the dismissals. It did not make arrangements for the election of employee representatives for the purposes of such consultation.

14. No information was provided to the Claimants, the GMB on behalf of any of them, nor any other employee representatives of any description regarding the dismissals.

15. No case has been made suggesting that there were special circumstances which rendered it not reasonably practicable to provide information or consult about the dismissals.

## **The law**

16. The Act provides as follows at section 188, so far as relevant:

*(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—*

**Case Nos: 1302690/2023, 1302822/2023, 1301829/2023 and others**

*(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) For the purposes of this section the appropriate representatives of any affected employees are –*

*(a) if the employees are 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).*

*(2) The consultation shall include consultation about ways of—*

*(a) avoiding the dismissals,*

*(b) reducing the numbers of employees to be dismissed, and*

*(c) mitigating the consequences of the dismissals,*

*and shall be undertaken by the employer with a view to reaching agreement with the appropriate representatives.*

*(4) For the purposes of the consultation the employer shall disclose in writing to the appropriate representatives—*

*(a) the reasons for his proposals,*

*(b) the numbers and description of employees whom it is proposed to dismiss as redundant,*

*(c) the total number of employees of any such description employed by the employer at the establishment in question,*

*(d) the proposed method of selecting the employees who may be dismissed,*

*(e) the proposed method of carrying out the dismissals, with due regard to any agreed procedure, including the period over which the dismissals are to take effect,*

*(f) the proposed method of calculating the amount of any redundancy payments to*

**Case Nos: 1302690/2023, 1302822/2023, 1301829/2023 and others**  
be made (otherwise than in compliance with an obligation imposed by or by virtue of any enactment) to employees who may be dismissed,

(g) the number of agency workers working temporarily for and under the supervision and direction of the employer,

(h) the parts of the employer's undertaking in which those agency workers are working, and

(i) the type of work those agency workers are carrying out.

(5) That information shall be given to each of the appropriate representatives by being delivered to them, or sent by post to an address notified by them to the employer, or (in the case of representatives of a trade union) sent by post to the union at the address of its head or main office.

(5A) The employer shall allow the appropriate representatives access to the affected employees and shall afford to those representatives such accommodation and other facilities as may be appropriate.

(7) If in any case there are special circumstances which render it not reasonably practicable for the employer to comply with a requirement of subsection (1A), (2) or (4), the employer shall take all such steps towards compliance with that requirement as are reasonably practicable in those circumstances.

17. Section 188A of the Act sets out the requirements for the election of employee representatives. As that did not take place, I do not need to set out that provision.

18. The Act also provides as follows at section 189, again so far as relevant:

(1) Where an employer has failed to comply with a requirement of section 188 ..., a complaint may be presented to an employment tribunal on that ground—

(a) in the case of a failure relating to the election of employee representatives, by any of the affected employees or by any of the employees who have been dismissed as redundant;

(b) in the case of any other failure relating to employee representatives, by any of the employee representatives to whom the failure related,

(c) in the case of failure relating to representatives of a trade union, by the trade union, and

(d) in any other case, by any of the affected employees or by any of the employees who have been dismissed as redundant.

(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

**Case Nos: 1302690/2023, 1302822/2023, 1301829/2023 and others**

*(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.*

*(5) An employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal –*

*(a) before the date on which the last of the dismissals to which the complaint relates takes effect, or*

*(b) during the period of three months beginning with that date ...*

*(6) If on a complaint under this section a question arises—*

*(a) whether there were special circumstances which rendered it not reasonably practicable for the employer to comply with any requirement of section 188, or*

*(b) whether he took all such steps towards compliance with that requirement as were reasonably practicable in those circumstances,*

*it is for the employer to show that there were and that he did.*

19. Section 195 of the Act provides:

*(1) In this Chapter references to dismissal as redundant are references to dismissal for a reason not related to the individual concerned or for a number of reasons all of which are not so related.*

*(2) For the purposes of any proceedings under this Chapter, where an employee is or is proposed to be dismissed it shall be presumed, unless the contrary is proved, that he is or is proposed to be dismissed as redundant.*

20. Insolvency is not of itself a special circumstance as defined in section 188 – **The Bakers' Union v Clarks of Hove Ltd [1978] IRLR 366** and **In re Hartlebury Printers Ltd and others (in liquidation) [1992] ICR 559**.

21. As for the amount of any protective award, it was said in **Susie Radin Limited v GMB [2004] IRLR 400** that the award is a sanction for breach of the Act, not compensation for the Claimants, and that where there has been a complete failure to comply with the Act, a Tribunal may start with the maximum award and reduce it only if there are mitigating circumstances justifying that course of action.

**Conclusions**

22. As set out in my findings of fact above, all of the Claimants were employed by the Respondent, at one establishment.

23. All of them – and there are more than twenty – were dismissed, on the same date. They were plainly therefore affected employees for the purposes of the Act.

24. I can presume that they were dismissed as redundant as defined by section 195 of the Act both because it is self-evident and the contrary has not been proved.

25. There was a complete failure to consult (and provide the information to enable consultation) before the dismissals took effect.

26. Given my conclusions about the absence of trade union recognition, the First Respondent had the option to either consult other existing representatives of the affected employees or representatives specifically elected for the purposes of redundancy consultation under the Act. It did neither.

27. There was a complete failure to comply with section 188. It has not been shown that there were special circumstances rendering compliance not reasonably practicable, noting the case law regarding insolvency above.

28. In the absence, as I conclude there was, of any appropriate representatives, all of the Claimants were entitled to bring their complaints to the Tribunal. For the reasons I have set out, their complaints are well-founded.

29. It is clearly appropriate to make a protective award. In line with the decision in **Susie Radin**, it is just and equitable that the length of the protected period be the maximum 90 days. This reflects the seriousness of the First Respondent's breach of its obligations. I have no evidence before me which would suggest that there are mitigating circumstances justifying a reduction.

30. I therefore make a protective award in respect of all the Claimants and order the First Respondent to pay to each of the Claimants remuneration for the protected period of 90 days beginning on 2 December 2022.

**Signed by: Employment Judge Faulkner**  
**Signed on: 28 August 2024**

**Note**

**Public access to employment tribunal decisions**

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

**Schedule – the Claimants**

**Claim 1**

1. Angela Anderson
2. Anthony Bailey
3. Annette Barker
4. Susan Bourne
5. Philip Brown
6. Mark Bryon
7. David Chilton
8. Steven Clewlow
9. Robert Dimond
10. David Dutton
11. Gaynor Grocott
12. Tina Leigh
13. Steven Mayer
14. Kathleen Mellor
15. Samual Oakes
16. Kevin Perry
17. Jeffrey Roberts
18. Claire Strachan
19. Sharon Stubbs
20. Denise Taylor
21. Kelvin Thomas
22. Mark Wilshaw
23. Kevin Wright

**Claim 2**

24. Mark McCue

**Claim 3**

25. Adrian Kulesza
26. Agnieszka Wasik
27. Andrea Billinge
28. Andrew Green
29. Angela Trigg
30. Bartosz Pietkiewicz
31. Callen Lumsdale
32. Cezak Dominik
33. Christopher Shenton
34. Craig Wasley



**Case Nos: 1302690/2023, 1302822/2023, 1301829/2023 and others**

35. Cyril Roberts
36. Daniel Farrell
37. Diane Abbotts
38. Gary Breeze
39. Ian Deaville
40. Jack Copeland
41. Jenny Speakman
42. Julie Robinson
43. Kerris Simpson
44. Kim Rowley
45. Lindsay Christopher Cotton
46. Lisa Hughes
47. Lynn Hill
48. Michelle Allen
49. Natalia Liskowicz
50. Ryan Abbotts
51. Shemelis Assafa
52. Stephen Chadwick
53. Stephen Cole
54. Stuart Shickell
55. Teresa Towey
56. Tim Colclough
57. Tracey Keenan
58. Tracy Cooper
59. Tracy Bryan
60. Yonatan Kahsai