



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr T Justice and others

**Respondent:** James Killelea and Company Limited (in Administration)

## JUDGMENT

### Rule 21 Employment Tribunal Rules of Procedure 2013

The respondent not having presented a response to the claims and on the information before the Judge.

The judgment of the Tribunal is that:

1. The claims of the claimant and the claimants listed on the attached Schedule under Section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 of a failure by the respondent to comply with the sections of Section 188 of the 1992 Act, are well founded.
2. The Tribunal orders the respondent by way of a protective award under Section 189(3) of the 1992 Act to pay to the claimants who were made redundant during the period Friday 13 October 2023 to Friday 3 November 2023, a payment equivalent to remuneration for the period of 90 days beginning on Friday 13 October 2023.
3. The Employment Protection (Recoupment of Job Seekers Allowance and Income Support) Regulations 1996 apply to these awards.

## REASONS

1. The claimants claim a protective award in respect of the failure of the respondent to consult collectively as required under the 1992 Act. No response was presented to the claims by the first respondent.
2. The first respondent is in administration and the administrators have given consent for these claims to proceed.

**Case Nos. 2411311/2023 and 41 others**  
**See attached Schedule**

3. On a full consideration of the file of proceedings it was possible to issue this Judgment under Rule 21 in respect of the claims for protective awards without a hearing.
4. On the information provided the Tribunal finds the first respondent employed over 20 employees from its premises at Stoneholme Road, Crawshaw Booth, Rossendale, Lancashire, BB4 8BA. I have not been informed of any trade union recognised for collective bargaining consultation or negotiation with the workforce at the site.
5. Over 20 employees were informed Friday 13 October 2023 by Robert Killelea and/or the administrators and/or their line manager that they were being made redundant with immediate effect. The company entered formal administration on 18 October 2023, according to Companies House.
6. Some of the claimants were made redundant slightly later during the protected period, after Friday 13 October 2023.
7. 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.
8. In these circumstances the respondent is 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 the date of the first redundancies Friday 13 October 2023.

---

Employment Judge KM Ross

5 February 2024

JUDGMENT AND REASONS SENT TO THE PARTIES ON

19 February 2024

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](https://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

**Recording and Transcription**

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>

**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

**Case Nos. 2411311/2023 and 41 others**  
**See attached Schedule**

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.

**Case Nos. 2411311/2023 and 41 others**  
**See attached Schedule**

	<b>Case Number</b>	<b>Claimant</b>
(1)	2411311/2023	Mr Timothy Justice
(2)	2411314/2023	Mr David John Beesley
(3)	2411326/2023	Ms Sian Pearson
(4)	2411328/2023	Mr Praful Nanji Patel
(5)	2411347/2023	Mr David Hayes
(6)	2411362/2023	Mr Gordon Haworth
(7)	2411364/2023	Mr Paul Radcliffe
(8)	2411368/2023	Mr Andrew Turner
(9)	2411370/2023	Mr Wayne Pearson
(10)	2411373/2023	Mr Andrew Gray
(11)	2411374/2023	Mr Darren Taylor
(12)	2411382/2023	Mr Artur Budzynski
(13)	2411383/2023	Mr Raymond Radford
(14)	2411394/2023	Mr Christopher Stott
(15)	2411453/2023	Mr Wayne Taylor
(16)	2411461/2023	Mr Adam Walmsley
(17)	2411463/2023	Mr Chris Littler
(18)	2411464/2023	Mr Neil Smith
(19)	2411478/2023	Mr Dale Weldon
(20)	2411483/2023	Mr Peter Brandwood
(21)	2411484/2023	Mr Shaun Clough
(22)	2411488/2023	Mr Mark Emlyn Thomas
(23)	2411504/2023	Mrs Sharon Tattersall
(24)	2411564/2023	Mr Daniel Craggs
(25)	2411601/2023	Mr Craig Miller
(26)	2411624/2023	Mr Oliwer Erber
(27)	2411625/2023	Mr Colm Park
(28)	2411633/2023	Mr Stephen Ince
(29)	2411641/2023	Mr Douglas Twiddy
(30)	2411642/2023	Mr Mark Pickford
(31)	2411645/2023	Mr Robert Southworth
(32)	2411660/2023	Mr Bobby Twiddy
(33)	2411662/2023	Mr David Heywood
(34)	2411702/2023	Mr Paul Lambert
(35)	2411765/2023	Mr Jason Hardman
(36)	2411766/2023	Mr Mark Read
(37)	2411779/2023	Mr Martin Shaw
(38)	2411801/2023	Mr John Deaton
(39)	2411905/2023	Mr Steven Hardman
(40)	2412073/2023	Mr Peter Brighty
(41)	2412122/2023	Mr Shaun Farrell
(42)	2412123/2023	Mr Jason Haworth