



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4106822/2024; 4106823/2024 & 4106824/2024

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Held in Glasgow via Cloud Video Platform (CVP) on 5 December 2024

Employment Judge P O'Donnell

10	Ms J Clark	First Claimant In Person
15	Mrs T Fowley	Second Claimant In Person
20	Ms K Devlin	Third Claimant In Person
25	Glenalmond Group (In Administration)	Respondent No appearance and No representation

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that:

1. The complaint that the respondent failed to comply with the requirement under
35 Section 188 of the Trade Union and Labour Relations (Consolidation) Act
1992 is well founded.
2. The Tribunal makes a protective award in respect of the claimants and the
respondent is ordered to pay remuneration for the protected period. The
protected period begins with 15 March 2024 and is for 90 days.

REASONS

1. The claimants have brought a complaint against the respondent seeking an award in respect of a failure by the respondent to comply with the obligation to engage in collective consultation when proposing to make redundancies.
5 This is type of claim is commonly referred to as a protective award claim.
2. The respondent is in administration. The administrator has given consent for these claims to proceed but has not entered any defence.
3. The issue in these claims is whether the obligation for the respondent to engage in collective consultation was triggered.
- 10 4. Under S.188 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A), an employer is placed under a duty to inform and consult with its employees about proposed redundancies. If an employer fails in this duty then affected employees can seek a declaration to that effect and payment of compensation, commonly referred to as a “protective award”.
- 15 5. The circumstances in which the duty to consult is triggered are set out in s188(1) of the 1992 Act:

*“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
20 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.”*
6. The duty falls on the person who is the actual employer of the relevant employees as defined s295 of the Act (that is, the person who is the other
25 party to the contract of employment held by the relevant employees).
7. This means that where an employer is controlled by another company (for example, a group of companies controlled by a parent company) then the duty to consult lies with the company that employs the workers in question even if the decision to make redundancies was taken by the parent company (*Akavan*

Erityisalojen Keskusliitto (AEK) ry and ors v Fujitsu Siemens Computers Oy
2010 ICR 444, ECJ).

8. The following facts were not in dispute:

5 a. There was a group of companies for which the respondent was the
parent company. There were then two other companies in the group;
Valve Components Ltd and IODS Pipe Clad Ltd. IODS was bought
by another business and has no further involvement in or relevance to
the present case.

10 b. An administrator was appointed in respect of the respondent and Valve
Components.

15 c. At a meeting on 15 March 2024, all the employees working for the
groups were informed that they were being made redundant that day.
Some employees were retained to assist the administrators but the
total number of employees being dismissed was in excess of 20
employees.

d. It is not in dispute that there was no consultation at all with employee
representatives (either from a recognised trade union or elected
representatives) regarding these redundancies of the kind envisaged
by the 1992 Act.

20 9. The question which arises in this case is whether the 20 employee threshold
has been met. This is because there has been the suggestion that there is
a separation between the claimants who worked for the respondent and
employees who worked under the banner of Valve Components. If there was
such a separation then the respondent was not making or proposing to make
25 20 employees or more redundant and the duty to consult would not be
engaged.

10. The claimants' position is that, although there was a separation for payroll
purposes, all employees working for companies in the group had a contract
of employment with the respondent.

11. In support of this position, they have produced a copy of Ms Devlin's contract documents and those of another employee who worked for Valve Components and was treated separately for payroll purposes. Both of these sets of documents very clearly state that the employer is the respondent.
- 5 12. There is no evidence to suggest that the other employee was in a unique position or was some kind of outlier. The Tribunal is, therefore, satisfied that all employees working for companies within the group were employed by the respondent and so the 20 employee threshold is met to engage the duty to consult.
- 10 13. The complaint that the respondent failed to comply with the requirement under Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 is well founded.
14. On 15 March 2024 the claimants were notified that their employment was coming to an end by reason of redundancy. No consultation or notice was
15 given to the employees before their employment was terminated. The claimants were dismissed on 15 March 2024
15. The respondent dismissed more than 20 employees by reason of redundancy within a 90-day period. All the employees were based at the same establishment.
- 20 16. There should be a protective award made in respect of such of the former employees of the respondent working at the respondent's establishment at 5 Kelvin Park South, Kelvin Park Industrial Estate, East Kilbride dismissed as redundant on 15 March 2024.

17. The Tribunal makes a protective award in respect of the claimants and the respondent is ordered to pay remuneration for the protected period. The protected period begins with 15 March 2024 and is for 90 days.

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P O'Donnell

Employment Judge

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06 December 2024

Date of Judgment

Date sent to parties

09 December 2024

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