Case No: 2600599/2019; 2600600/2019; 2600601/2019; 2600602/2019; 2600603/2019; 2600604/2019; 2600605/2019; 2600607/2019; 2600607/2019; 2600608/2019; 2600609/2019; 2600610/2019; 2600611/2019; 2600612/2019; 2600613/2019; 2600614/2019; 2600615/2019; 2600616/2019; 2600617/2019; 2600618/2019; 2600784/2019

EMPLOYMENT TRIBUNALS

Claimant: **1.** Unite the Union & 17 others
2. Mr C Cannon
3. Mr K Kafno
4. Mr G Pulford

Respondent: **1.** Hallam Plastics Ltd (in administration)
2. Secretary of State for Business, Energy and Industrial Strategy

Heard at: **Nottingham** **On:** **17 July 2019**

Before: **Employment Judge Brewer**

Representation
Claimant: For C1, Mr N Arora, Counsel
Mr Cannon, in person
No appearance by C3 or C4

Respondent: No appearance for R1 or R2

JUDGMENT

1. **The claims of Mr Kafno and Mr Pulford are dismissed**
2. **The claims of Mr Cannon are dismissed**
3. **The claim brought by Unite the Union for a protective award succeeds for the claimants in schedule 1**
4. **The claims for enhanced redundancy payments succeed for the claimants in schedule 2**

Reasons

Introduction

1. This case has already been the subject of two preliminary hearings. Neither Mr Kafno nor Mr Pulford attended those hearings and it was unclear whether they were intending to pursue their claims. At the preliminary hearing on 25 June 2019 judge Heap made it clear that at the tribunal during the case on merits if they do not attend the claims could be struck out. O tend to the final hearing of this case and I dismissed to the claims under rule 47 of the Employment Tribunals (Constitution and Rules of Procedure Regulations 2013).

Issues

2. In the remaining cases the issues to be decided by the tribunal were as follows:
   2.1. Was the first respondent required to consult with Unite about collective redundancies;
   2.2. Did the first respondent fail to carry out its obligations to consult collectively for 45 days before making the claimants redundant;
   2.3. If so, were there special circumstances applicable in this case such that the award should be reduced from the starting point of 90 days pay per relevant employee;
   2.4. Did the first respondent breach of the contract of employment of the employees in failing to pay them contractual redundancy pay?
   2.5. In the case of Mr Cannon, did he bring his claim within the normal time period applicable in his case and if not should time be extended on the basis that it was not reasonably practicable for him to bring his claim in time and the extra time taken was a reasonable.

Law

3. Where there are collective redundancies, that is 20 or more employees being dismissed as redundant at one establishment within the period of 90 days, the employer proposing to dismiss the employee redundant as an obligation to consult collectively for 30 or 45 days depending on the numbers of redundancies. That obligation is found in section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992.
4. The leading case on the amount of a collective award is **Susie Radin Ltd v GMB [2004] IRLR 400**.
5. In relation to Mr Cannon's claim, the issue is whether his claim was brought in time and if it was not, whether to extend time or whether he can benefit on the back of the claims brought by the first respondent. That is to say can he rely on the ET1 submitted by Unite?

Facts, discussion and judgment

6. I make the following findings of fact in relation to the claimant Mr Cameron.
7. Mr Cameron was made redundant with effect from 24 September 2018. That is the effective date of time. Mr Cannon was not a member of Unite but sometime after that He should have lodged his claim here heard from a former colleague, around mid December 2018 that a number of former colleagues of his were bringing claims through Unite to the employment tribunal. He decided to undertake some research at the beginning of January 2019 and by mid January 2019 he became aware that he could make a claim for a protective award. He was slightly unwell at the end of January and in the event brought his claim on 13 March 2019.
8. The normal time limit for Mr Cannon's claim was 23 December 2018. His claim was submitted significantly out of time. He gave no evidence of any impediment to him bring his claim in time. He had access to a laptop you to undertake research should you wish and indeed subsequently did. In the event, even if there was an impediment to in bringing his claim in time, given that he knew he could make a claim by mid January 2019 the time taken to submit the claim, some seven or eight weeks later is not in my judgement reasonable.
9. Turning to the possibility that Mr Cannon could succeed by piggybacking on the Unite claim, this requires that he is included on the same claim form as the other claimants who bring their claims through Unite – see rule 3(1)(a) of the Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014. Mr Cannon is not included in the united claim.
10. In the circumstances the tribunal does not have jurisdiction to hear his claim and for those reasons Mr Cannon's claim is dismissed.
11. I turn now to the claim by Unite and make the following findings.
12. Unite the union was founded by the amalgamation of the TGWU and Amicus. Since at least 2007 Unite has collectively bargained with the first respondent on the half of all shop floor workers at the first respondent. The first respondent's employment handbook, which has not been updated for some considerable time, States clearly that the TGWU that was the recognised trade union. Given the amalgamation and creation of Unite as set out above, and accepting the evidence of Mr McGlinchey, I am satisfied that Unite is the recognised union in this case.
13. We had all evidence from both Mr McGlinchey, the full-time official for Unite, and Mrs Carlin, one of the claimants. We found both of them to be credible witnesses and we unreservedly accept the evidence.
14. The first respondent was a busy business. Right up until the redundancies were made staff were working overtime and at weekends endeavouring to fill orders. Problems see oh reallym to have arisen when the owner sadly passed away. It appears that his wife had no interest in the business and tried to sell it. As in any such circumstances staff were concerned that a sale of the business might lead to some redundancies, and in early September 28 Sharon Davies told Mrs Carlin that there could be some redundancies at which point Mrs Carlin asked Ms Davies to engage with Unite. Although Ms Davis she would do that in the event she did not. Therefore on 13 September 2018 Mrs Carlin contacted Unite herself. At that time Mr McGlinchey was away but on his return on 19 September 2018 he

spoke to Mrs Carlin who told him that a receiver or administrator had been appointed to the company and that no one knew what was going on. It would appear that previously, on 11 September 2018 the workforce have been told at a meeting that an administrator had been appointed and this was confirmed in a letter to the workforce of 12 September 2018. However Mrs Carlin's evidence was that the emphasis was always on the sale business and this was supported by the fact that the workers were in fact very busy.

15. On 19 September 2019 Mr McGlinchey met one of the administrators, Mr Sharma. Following that meeting Mr McGlinchey emailed Mr Sharma reminding him of the collective consultation obligations under the 1992 Act. Mr McGlinchey did this as a protective act. In the same email Mr McGlinchey offered to meet Mr Sharma on 24 of September 2018 for further discussions.
16. In the event, on 24 September 2018 all staff were called to meeting to be told that they were being made redundant with immediate effect. They were told that the business was closing.
17. In announcing this decision it is clear that no steps were taken to provide the information required under the 1992 Act to the recognised trade union even though Mr McGlinchey had given the company the opportunity to do that. Furthermore although staff of the administrators were to be on site for a few days following the announcement, that was to enable staff to take advice on making claims for unpaid pay. What is clear is that no steps were taken that to undertake any consultation with the recognised trade union. In all the circumstances there is no basis for reducing the protective award from the maximum 90 days per employee.
18. Telling into the claims for enhanced redundancy payment, we accept the evidence of Mrs Carlin that all employees with more than five years service have the same contractual right to a contractual redundancy payment of four weeks pay.
19. We have set out a schedule of payments of the protective award and the enhanced redundancy pay attached to this judgement.

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Employment Judge

Date: 29 July 2019

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

Note
Written reasons will not be provided unless a written request is presented by either party within 14 days of the sending of this written record of the decision.

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

Schedule 1

Protective awards

Name	**Amount**
Jane Carlin	£5,602.14
Paul Cope	£5,700.00
Laura Esson	£2,178.00
Wayne Hadfield	£6,568.38
Paul Hollis	£7,104.24
John Holmes	£5,537.52
Tony Keetley	£5,932.44
Neil Parry	£5,537.52
Adrian Peplow	£7,487.90
Kevin Ratcliffe	£5,537.52
Mark Storer	£6,055.56
Emma Wheatcroft	£6,055.56
Chris Woolley	£6,055.56
Mark Yeoman	£6,643.80

Schedule 2

Enhanced Redundancy Pay

Name	Amount
Jane Carlin	£1,244.92
Paul Cope	£1,266.72
Laura Esson	£1,266.72
Wayne Hadfield	£1,459.66
Paul Hollis	£1,578.72
John Holmes	£1,230.56
Tony Keetley	£1,318.33
Neil Parry	£1,230.56
Adrian Peplow	£1,666.20
Kevin Ratcliffe	£1,244.92
Mark Storer	£1,345.68
Emma Wheatcroft	£1,244.92
Chris Woolley	£1,345.68
Mark Yeoman	£1,476.40