



EMPLOYMENT TRIBUNALS

Claimants Mrs P Albrecht-Moklak and others (see Schedule)

Respondents: (1) STA Travel Ltd (In Creditors Voluntary Liquidation)
(2) Secretary of State for Business, Energy and Industrial Strategy

HELD AT: Manchester **ON:** 22 September 2021
(in chambers)

BEFORE: Employment Judge McDonald
(sitting alone)

REPRESENTATION:

Claimants: Not required to attend

Respondent: (1) Not represented, the claims having not been contested
(2) Not represented, written submissions provided.

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

In the absence of a response from the first respondent to the claimants' claims, and on the information before the Judge, the Judgment of the Tribunal is that:

1. The first respondent failed to consult with the claimants named in the attached Schedule ("The St George's House claimants"), being people who may be affected by proposals to dismiss or measures taken in connection with the dismissal of twenty or more employees, in breach of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992.
2. Under Section 189(1)(d), (2), (3) and (4) of the Trade Union and Labour Relations (Consolidation) Act 1992, the Tribunal makes a protective award in respect of each of the St George's House claimants and the first respondent is ordered to pay remuneration to each of those claimants for a protected period of 90 days beginning on 2 September 2020.

3. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply to these awards.

REASONS

1. The 39 claimants in these proceedings claimed a protective award in respect of breach of the collective consultation requirements. A number of the claimants also brought claims relating to unpaid wages, redundancy pay and other payments. The first respondent did not present a response to any of the claims.
2. The Secretary of State has been joined to the proceedings because of its role as the statutory guarantor.
3. The claimants in these proceedings were based at two different premises. 35 worked at St George's House, 56 Peter Street, Manchester, M2 3NQ ("St. George's House"). The other 4 worked at Unit 6, Barton Arcade, Deansgate, Manchester M3 2BW ("Barton Arcade").
4. The Tribunal makes the following findings based upon the claim:
 - a. The first respondent had no trade union recognised for collective bargaining, consultation or negotiation with the workforce. There were no elected representatives;
 - b. The first respondent's business ceased trading on 2 September 2020. The first of the redundancies took effect on that date. There was no consultation with the claimants;
 - c. The first respondent entered into creditors voluntary liquidation on 6 October 2020;
 - d. The respondent employed over 20 employees at St.George's House. The total number employed at that establishment was in the region of 100. All of those employees were dismissed on 2 September 2020.
 - e. The respondent employed 4-5 employees (but in any event fewer than 20 employees) at Barton Arcade. All of those employees were dismissed on 2 September 2020.
5. The requirement to consult under s.188 of the 1992 applies where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less.
6. There is an issue as to whether Barton Arcade was an establishment in its own right or formed part of a larger "virtual" establishment consisting of more than 20 employees affected by the redundancies. The Tribunal can only determine that issue after hearing evidence. A preliminary hearing will be listed to determine that issue. However, the Tribunal is satisfied that

the obligation to consult did apply in relation to St George's House. This judgment relates to the 35 St George's House claimants not the 4 Barton Arcade claimants.

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. The dismissals were put into effect without any consultation or information being provided in writing in advance.

8. In these circumstances, the first respondent was in breach of the duty under Section 188 of the 1992 Act and the Tribunal makes an award under Section 189 in favour of each of the St George's House claimants for the maximum protected period of 90 days commencing on 2 September 2020.

9. The first respondent is advised of the provisions of Regulation 5 of the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996, such that, within 10 days of the decision in these proceedings being promulgated or as soon as is reasonably practicable, the first respondent must comply with the provisions of Regulation 6 of the 1996 Regulations and, in particular, must supply to the Secretary of State the following information in writing:

- a. the name, address and national insurance number of every employee to whom the award relates; and
- b. the date of termination of the employment of each such employee.

10. The first respondent will not be required to make any payment under the protective awards made until it has received a recoupment notice from the Secretary of State or notification that the Secretary of State does not intend to serve a recoupment notice having regard to the provisions of Regulation 7(2). The Secretary of State must normally serve such recoupment notice or notification on the employer within 21 days of receipt of the required information from the respondent.

11. This Judgment applies to the St George's House claimants' claims for protective awards only. The Tribunal will shortly be writing to the St George's House claimants about their other claims.

12. The Tribunal will shortly also be writing imminently to the Barton Arcade claimants to give details of the preliminary hearing relating to their claims for a protective award and the steps needed to prepare for it.

NOTE

13. A protective award is a two-stage process. The Tribunal at this stage makes no financial award, but gives a judgment that the St George's House claimants are entitled to a protective award in the terms set out above. Those claimants must each then seek payment of their individual award from the respondent (or the Secretary of State), quantifying the same.

14. Failure to pay (should that occur), or any dispute as to the amount payable, then becomes a matter for a further separate claim under s.192 of the Trade Union and Labour Relations (Consolidation) Act 1992 for payment of the award.

Employment Judge McDonald

22 September 2021

JUDGMENT SENT TO THE PARTIES ON

AND ENTERED IN THE REGISTER

23 September 2021

FOR THE TRIBUNAL OFFICE

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SCHEDULE TO JUDGMENT OF 22 SEPTEMBER 2021

CASE NUMBERS	CLAIMANTS
2413632/2020	Mrs Petra Albrecht Moklak
2413651/2020	Mr Andrew Bodley
2413653/2020	Mrs Laura Butler
2413655/2020	Miss Caitlin David Newham
2413656/2020	Mr Lee Flower
2413661/2020	Mr Sayed Kadri
2413664/2020	Mrs Melissa McNeeney
2413665/2020	Mrs Hannah Mozley
2413695/2020	Miss Katy Czyzewska
2413696/2020	Miss Ruth Daly
2413697/2020	Mrs Carly Halliwell
2413761/2020	Miss Nicola Clare Deering
2413763/2020	Ms Amanda Haggan
2413765/2020	Mr Paul Hodgkinson
2413769/2020	Mrs Nicola Porteus
2413771/2020	Miss Michaela Rose
2413773/2020	Ms Kalliopi Tsili
2413924/2020	Miss Sarah Archer
2413932/2020	Mr Jak Blenkinsop
2413944/2020	Mrs Lauren Frodsham
2413962/2020	Mr Alistair Lee
2413994/2020	Mr Hugh Hoffmann
2414101/2020	Mrs Magdalena Dyszy
2414119/2020	Ms Beth Powell
2415208/2020	Ms Lauren Braybrook
2415450/2020	Mr James Norman
2417722/2020	Mrs Natalie Riezzo-Wilson
2417916/2020	Mrs Stephanie Boss
2417941/2020	Miss Jennifer Wilson
2417955/2020	Miss Isabel Farmer
2417957/2020	Mr Zachary Greed
2418002/2020	Mrs Jayne Moseley
2418401/2020	Mr Warwick Heffer
2418524/2020	Mr Jon Lulham-Dillon
2418525/2020	Miss Sarah McFerran

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(2) Secretary of State for Business, Energy and Industrial Strategy

**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 first 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 therefrom 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 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.