EMPLOYMENT TRIBUNALS

BETWEEN

Claimants	**Respondents**
Mr A Allen (1)	AND Severnprint Limited (In Administration) (1)
Mr A Long (2)	The Secretary of State for Business and Trade (2)
Ms E Locke (3)	
Ms S Beaver (4)	
Mr B Stacey (5)	

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD REMOTELY **ON** 13 September 2024
By CVP Video Platform

EMPLOYMENT JUDGE N J Roper

Representation

For the First Claimant	**Did Not Attend**
For the Other Four Claimants:	**Mr C Ilangaratne of Counsel**
For the First Respondent:	**Did not attend**
For the Second Respondent:	**Written Submissions**

JUDGMENT

The judgment of the Employment Judge sitting alone is that:

1. The complaint that the first respondent failed to comply with a requirement of 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 all shift workers and office workers of the first respondent at its premises at Ashville Industrial Estate, Ashville Road, Gloucestershire, GL2 5EU who were dismissed as redundant on 31 January 2024 and orders the first respondent to pay those employees remuneration for the protected period of 90 days beginning on 31 January 2024.

3. The claims brought by Mr L Allen (1400737/2024), Ms J Ireland (1401061/2024), Mr K Ivanov (1401062/2024), Mr D Biggs (1401063/2024), Mr C Stefferson (1401099/2024), Mr J Andrews (1401178/2024), Mr A Nelson (1401179/2024), Mr L Ellis (1401180/2024), Mr M Beard (1401181/2024), Ms S Holvey (1401182/2024), and Mr D Grant (1401183/2024) are all dismissed because they do not have standing to bring individual claims in circumstances where the (first) five claimants were elected as their employee representatives. The claim brought in the name of Mr Bruce Stanley (1401177/2024) is also dismissed because it was a mistaken duplicate of the fifth claimant's claim (Mr Bruce Stacey (1400668/2024)) which survives.

RESERVED REASONS

1. This is a claim for a protective award brought by sixteen separate claimants. The first claim received was on behalf Mr Bruce Stacey under tribunal reference 1400668/2024. His claim was accidentally reissued in the name of Mr Bruce Stanley under tribunal reference 1401177/2024. That later claim is now dismissed as being an erroneous duplicate.
2. For the reasons explained below, the first five claimants were elected as employee representatives. They are Mr A Allen (1400736/2024), Mr A Long (1401174/2024), Ms E Locke (1401175/2024), Ms S Beaver (1401176/2024), and Mr B Stacey (1400668/2024). They have standing to present these claims on behalf of those whom they were elected to represent. The remaining claimants do not have standing to present their claims which accordingly are dismissed. For the avoidance of doubt these claims which are dismissed are: Mr L Allen (1400737/2024), Ms J Ireland (1401061/2024), Mr K Ivanov (1401062/2024), Mr D Biggs (1401063/2024), Mr C Stefferson (1401099/2024),] Mr J Andrews (1401178/2024), Mr A Nelson (1401179/2024), Mr L Ellis (1401180/2024), Mr M Beard (1401181/2024), Ms S Holvey (1401182/2024) and Mr D Grant (1401183/2024).
3. The first claimant Mr Long gave evidence to this hearing. The claimants had also prepared a bundle of the relevant documents. I have considered the evidence before me, both oral and documentary, and I have considered the legal and factual submissions made by and on behalf of the respective parties. I find the following facts proven on the balance of probabilities.
4. The claimants were all employees of the first respondent company Severnprint Limited, which entered administration on 8 February 2024. The first respondent had called a meeting with its employees on 23 January 2024 and announced that the company was not financially viable and might have to close down. The first respondent did not recognise an independent trade union for the purposes of collective bargaining, consultation and negotiation. It commenced a process of electing employee representatives of its office and shift workers for the purposes of collective consultation.
5. On 24 January 2024 the employees received letters explaining that the first respondent was considering closing the entire business and that their roles

were at risk of redundancy. The first respondent then commenced the process of electing employee representatives, and it intended to appoint five of these to cover four groups of employees.

6. The first and second claimants Mr Allen and Mr Long were elected as the representatives for those working early and day shifts; the third claimant Ms Locke was elected to represent those working late shifts; the fourth claimant Ms Beaver was elected to represent office staff; and the fifth claimant Mr Stacey was elected to represent those working night shifts. This was confirmed by letter from the first respondent to these representatives on 26 January 2024. That letter explained the information which the company was legally required to provide, and it explained the role of these representatives. Nonetheless there was no consultation about the impending redundancies.
7. All of the claimants and the employees whom they were elected to represent worked at the first respondent's premises at the Ashville Industrial Estate, Ashville Road, Gloucestershire, GL2 5EU.
8. On 31 January 2024 the proposed Administrator for the first respondent convened a meeting with the five claimants (that are to say the elected representatives) and informed them that the first respondent was going into administration and that all of the respondent's employees were being made redundant with immediate effect. That meant that all 38 employees who were represented by the five claimants were dismissed by reason of redundancy with immediate effect. They all worked at or from the first respondent's premises at the Ashville Industrial Estate explained above.
9. The first respondent subsequently entered administration on 8 February 2024.
10. The first respondent failed to undertake any or any adequate consultation with the claimant union prior to the dismissals. In particular, the first respondent did not begin the consultation in good time and in any event at least 30 days before the first of the dismissals took effect.
11. Having found the above facts, I now apply the law.
12. The relevant law is in the Trade Union and Labour Relations (Consultation) Act 1992 ("TULRCA").
13. Section 188(1) of TULRCA provides as follows: "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". S188(1A) provides that "The consultation shall begin in good time and in any event – (a) where the employer is proposing to dismiss 100 or more employees as mentioned in subsection (1), at least 90 days, and (b) otherwise, at least 30 days, before the first of the dismissals takes effect.
14. S 188(1B) provides that: "For the purposes of this section the appropriate representatives of any affected employees are – (a) if the employees 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)."

15. S 188(2): provides that; "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."
16. Section 188(4) provides: "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 descriptions 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 any dismissals are to take effect, (f) the proposed method of calculating the amount of any redundancy payments to be made (otherwise than in compliance with the 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 are those agency workers are carrying out."
17. Section 188(5) provides: "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."
18. In this case there was no independent recognised trade union, but there were elected employee representatives. Only these elected representatives have standing to bring a claim for a protective award. Despite the election of these representatives, the first respondent did not begin the consultation in good time and in any event at least 30 days before the first of the dismissals took effect. I therefore make a protective award in favour of all the office and shift worker employees who were represented by the employee representatives.

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Employment Judge N J Roper
Dated 13 September 2024

Judgment sent to Parties on:

20 September 2024

For the Tribunal Office

	Case Number	**Claimant Name**
1.	1400668/2024	Mr Bruce Stacey
2.	1400736/2024	Mr Andrew Allen
3.	1400737/2024	Mr Lewis Allen
4.	1401061/2024	Joanne Ireland
5.	1401062/2024	Konstantin Ivanov
6.	1401063/2024	David Biggs
7.	1401099/2024	Mr Carl Steffensen
8.	1401174/2024	Mr Anthony Long
9.	1401175/2024	Ms Ellie Locke
10.	1401176/2024	Ms Stacey Beaver
11.	1401177/2024	Mr Bruce Stacey
12.	1401178/2024	Mr John Andrews
13.	1401179/2024	Mr Andrew Nelson
14.	1401180/2024	Mr Leeroy Ellis
15.	1401181/2024	Mr Mark Beard
16.	1401182/2024	Ms Susan Holvey
17.	1401183/2024	Mr Danny Grant

ANNEX TO THE JUDGMENT
(PROTECTIVE AWARDS)

Recoupment of Jobseeker's Allowance, income-related Employment and Support Allowance and Income Support

The following particulars are given pursuant to the Employment Protection (Recoupment of Jobseekers Allowance and Income Support) Regulations 1996, SI 1996 No 2349, Regulation 5(2)(b), SI 2010 No 2429 Reg.5.

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 lesser of:

(i) 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

(ii) 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 protective period falling before the date described in (i) above.

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.