



# EMPLOYMENT TRIBUNALS

**BETWEEN**

**Claimants**

Mr A Day and 23 Others    AND    Fiennes Restoration Ltd (In Administration) (1)  
The Secretary of State for Business, Energy & Industrial Strategy (2)

**Respondents**

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

**HELD REMOTELY**  
**By CVP Video**

**ON**

14 February 2024

**EMPLOYMENT JUDGE**    N J Roper

**Representation**

**For the Claimants:**                      **Mr O Ghaffoor, Solicitor**  
**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 the 24 Claimants who were employees of the first respondent at its premises at Broughton Poggs Business Park and who were dismissed as redundant on 1 February 2023 and orders the first respondent to pay the Claimants remuneration for the protected period of 90 days beginning on 1 February 2023.

## **RESERVED REASONS**

1. This is a claim for a protective award brought by the following 24 Claimants: Mr A Day; Mr A Pike; Mr P Willoughby; Mr H Gorton; Mr T Owers; Ms H Parker; Mr W Fiennes; Mr R Napper; Mr P Parry; Mr A Panting; Mr G Rainbow-Ockwell; Mr R Boyd; Mr M Cuss; Mr M Smith; Mr P Johnson; Mr C James; Ms L Fiennes; Ms L Willoughby; Mr N Kleiff; Mr T Mika; Mr B Scanlon; Mr M Luffman; Mr D McCluskey; and Mr N Rance (who are referred to collectively in this judgment as “the Claimants”).
2. I have heard from Mr Adrian Day, the first named claimant, on behalf of all of the Claimants. 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.
3. The first respondent company was a motor vehicle restoration specialist located at Broughton Poggs Business Park, Broughton Poggs, Filkins, Lechlade, GL7 3JH. The Claimants were all a mixture of restoration technicians, coachbuilders, managers, office workers and other workshop operatives. They all worked from offices and/or the workshop located at Broughton Poggs Business Park. There were approximately 36 members of staff employed at this location.
4. The first respondent company did not recognise any independent trade union, and there were no employee representatives at the workplace.
5. 1 February 2023 the claimants were all informed by a director of the first respondent and an Insolvency Practitioner that the first respondent was unable to keep financing the business with the result that all of the Claimants were to be made redundant with immediate effect. All 36 employees were dismissed by reason of redundancy on the same day.
6. The first respondent failed to undertake any or any adequate consultation with any of the Claimants prior to the dismissals.
7. Having found the above facts I now apply the law.
8. The relevant law is in the Trade Union and Labour Relations (Consultation) Act 1992 (“TULRCA”).
9. 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.
10. 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).”
11. 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.”
  12. 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.”
  13. 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.”
  14. In this case the first respondent dismissed more than 20 employees on the same day at the same location, and it failed to undertake any consultation with any of the Claimants. There were no appropriate representatives, either existing or elected. The Claimants’ claims that the first respondent failed to comply with a requirement of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 are well-founded. The first respondent is ordered to pay the Claimants remuneration for the protected period of 90 days beginning on 1 February 2023.

Employment Judge N J Roper  
Date: 14 February 2024

Judgment sent to Parties: 27 February 2024

For the Tribunal Office

**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.

**Schedule of Claimants**

<b>Case number</b>	<b>Title</b>	<b>Claimants Name</b>
1403466/2023	Mr	Adrian Day
1403467/2023	Mr	Anthony Pike
1403468/2023	Mr	Paul Willoughby
1403469/2023	Mr	Hugh Gorton
1403470/2023	Mr	Timothy Owers
1403471/2023	Ms	Heather Parker
1403472/2023	Mr	Will Fiennes
1403473/2023	Mr	Richard Napper
1403474/2023	Mr	Paul Parry
1403475/2023	Mr	Aidan Panting
1403476/2023	Mr	Gary Rainbow-Ockwell
1403477/2023	Mr	Rob Boyd
1403478/2023	Mr	Mark Cuss
1403479/2023	Mr	Mark Smith
1403480/2023	Mr	Paul Johnson
1403481/2023	Mr	Christopher James
1403482/2023	Ms	Lucy Fiennes
1403483/2023	Ms	Laura Willoughby
1403484/2023	Mr	Nicholas Kleiff
1403485/2023	Mr	Tomasz Mika
1403486/2023	Mr	Ben Scanlan
1403487/2023	Mr	Martin Luffman
1403488/2023	Mr	Declan McCluskey
1403489/2023	Mr	Neil Rance