



EMPLOYMENT TRIBUNALS

Claimants: Mr R Johnson

Respondent: Tolent Construction Limited “In Administration”

Rule 96 party: Secretary of State for Business and Trade

JUDGMENT ON LIABILITY AND REMEDY

Employment Tribunals Rules of Procedure 2013 – Rule 21

The Judgment of the Employment Tribunal is as follows:

1. The claimant’s claim under section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) of a failure by the respondent to comply with the requirements of section 188 of the 1992 Act is well-founded.
2. The Tribunal orders the respondent, by way of protective award under section 189 (3) of the 1992 Act, to pay to the claimant a payment equivalent to remuneration for the period of 90 days beginning on 13 February 2023.
3. The Employment Protection (Recoupment of Jobseekers Allowance and Income Support) Regulations 1996 apply to these awards. The protected period is the period of 90 days beginning on 13 February 2023.
4. The respondent is advised of the provisions of Regulation 6 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 or as soon as is reasonably practicable, the 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 the employee to whom the award relates;

- b. the date of termination of the employment of the employee.
5. The respondent will not be required to make any payment under the protective award 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.

REASONS

1. The claimant submitted a claim to the Employment Tribunal on 22 March 2023 for a protective award.
2. The respondent entered into administration on 13 February 2023. A copy of the ET1 form was sent by the Tribunal to the administrator on 31 March 2023. The respondent, through the administrator, filed a response on 21 April 2023, stating that they did not intend to defend the claim and agreed to the lifting of the moratorium to enable the claim for protective awards only to proceed.
3. The Secretary of State for Business and Trade was joined as an interested party under Rule 96 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 and a copy of the ET1 form was provided by the Tribunal.
4. In February 2023 the respondent proposed to dismiss as redundant 20 or more employees at Colton House, Bullerthorpe Lane, Leeds. The first dismissal took effect on 13 February 2023.
5. There was no proper warning or consultation undertaken with a recognised trade union or the claimant. There was no consultation with the claimants and no employee representatives had been elected or appointed for any such consultation within section 188A of the 1992 Act.
6. In the circumstances, the respondent is in breach of the duty under section 188 of the 1992 Act and the Tribunal makes an award under section 189 in favour of the claimants for the maximum protected period of 90 days commencing on 13 February 2023.
7. The respondent is advised of the provisions of regulation 6 of the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996, such that, within ten days of the decision in these proceedings being promulgated or as soon as is reasonably practicable, the 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 names, addresses and national insurance numbers of the claimants to whom the award relates; and
 - b. The date of termination of the employment of the claimants.

8. The respondent will not be required to make any payment under the protective award 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.
9. As the respondent had indicated it did not wish to defend the claims, the above Judgment has been entered without a hearing on the basis of the information provided by the claimant and in accordance with Rule 21 of the Employment Tribunal Rules of Procedure 2013.

Employment Judge Arullendran

Date: 24 April 2024

Note: This has been a hearing on the papers which has not objected to by the parties. A face to face hearing was not held because it was not practicable, no-one requested the same and all the issues could be determined on the papers.

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