



EMPLOYMENT TRIBUNALS

Claimant: Mrs L Terry

Respondents: 1. Food Innovations (Manufacturing) Limited (In administration)
2. The Secretary of State for Business, Energy & Strategy

Heard at: Liverpool (by CVP)

On: 28 August 2024

Before: Employment Judge Benson

Representation

Claimants: Ms R Carter – a colleague

Respondents: No attendance

JUDGMENT

The judgment of the Tribunal is that:

1. The claim was not presented within the applicable time limit, but it was not reasonably practicable to do so. The claim was presented within a further reasonable period. The claim will therefore proceed.
2. The Tribunal declares that 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 and makes a protective award in respect of the claimant and orders that the first respondent pay the claimant remuneration for the period of 90 dates beginning on 12 September 2022.

REASONS

1. Evidence and submissions were given by the claimant. The Tribunal further considered the Grounds of Resistance filed on half of the Secretary of State for BES. No response was filed by the administrator of the first respondent, but consent was given for the claim of a protective award only to proceed.

2. From that evidence, the Tribunal was satisfied of the following:
- (a) There were no recognised Trades Unions or employee representatives.
 - (b) The claimant and colleagues were employed at one establishment in Nottingham.
 - (c) The first respondent went into administration on 12 September 2022.
 - (d) There were more than 50 employees employed at the first respondent's premises in Nottingham, though an exact figure could not be provided by the claimants.
 - (e) No consultation took place with the claimant.
 - (f) On 12 September 2022 the claimant and all other staff were told that the respondent was in administration, and they were redundant with immediate effect.
 - (g) There were no special circumstances which would reduce the protective period.

3. In the circumstances the Tribunal was satisfied that a protective award should be made in respect of each of the claimants and that 90 days was the appropriate period.

NOTE

The following statement is given under regulation 5(2)(b) of the Employment Protection (Recoup of Benefits) Regulations 1996 ("the Regulations") and advises the respondent of its duties under regulation and of the effect of regulations 7 and 8 of the Regulations.

- (1) The respondent is required to give the Benefits Agency in writing:
 - (a) The name, address and national insurance number of every employee to whom the above protective award relates; and
 - (b) The date of termination (or proposed termination) of the employment of each such employee.
- (2) The respondent is required to comply with paragraph (1) above within the period of ten days commencing on the date when the judgment was announced at the hearing or, if it was not so announced, the date on which the Judgment was sent to the parties.
- (3) No remuneration due to an employee under the protective award shall be paid to him until the Benefits Agency has:
 - (a) served on the respondent a notice ("a recoupment notice") to pay the whole or part of the award to the Benefits Agency; or

- (b) informed the respondent in writing that no recoupment notice is to be served.
- (4) The sum due to the Benefits Agency under a recoupment notice shall be the lesser of:
- (i) the amount (less any tax or social security contributions which fall to be deducted by the respondent) accrued due to the employee in respect of so much of the protected period as falls before the date on which the Benefits Agency receives from the respondent the information mentioned at paragraph (1) above; and
 - (ii) the amount paid by way of, or as on account of, Jobseeker's Allowance or Income Support to the employee for any period which coincides with any part of the protected period falling before the date mentioned at (i) above.
- (5) The sum due under the recoupment notice shall be paid forthwith to the Benefits Agency. The balance of the protective award shall then (subject to deduction of any tax or social security contributions) be paid to the employee.
- (6) The Benefits Agency shall serve a recoupment notice within the period of 21 days after the date mentioned at paragraph (4)(ii) above or as soon as practicable thereafter.
- (7) Payment by the respondent to the employee of the balance of the protected award (subject to deduction of any tax or social security contributions) is a complete discharge of the respondent in respect of any sum so paid.
- (8) The sum claimed in a recoupment notice is due as a debt by the respondent to the Benefits Agency, whatever may have been paid to the employee and whether or not there is any dispute between the employee and the Benefits Agency as to the amount specified in the recoupment notice.

Employment Judge Benson
Dated: 28 August 2024

JUDGMENT AND REASONS SENT TO THE PARTIES ON
2 September 2024

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