

COMBINED PROCEEDINGS

Case Numbers: 2501147/2018, 2501148/2018, 2501166/2018, 2501173/2018, 2501251/2018, 2501252/2018, 2501254/2018, 2501334/2018 and 2503279/2018



THE EMPLOYMENT TRIBUNALS

BETWEEN

Claimants

Respondent

Mrs Ann Curry
Mr Paul White
Mr Paul Jardine
Mr John Atkinson
Mr Anthony Dobson
Mr Paul Kane
Mrs Catherine Beattie
Ms Karen Hodgson
Mr Anthony Robson

AND

**TSF Retail Solutions Limited
(in administration)**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Held at: North Shields
Before: Employment Judge A M Buchanan

On: 11 January 2019

Appearances

For the Claimants: In person in all cases except the claimants Paul White and Paul Jardine who did not attend

For the Respondent: No attendance and no response entered save to give consent in each case for the claims for a protective award to be considered

JUDGMENT

Rule 21 of Schedule I to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (“the 2013 Rules”)

Provisions applicable to all claimants

1. The complaint advanced by each of the claimants that the respondent failed to comply with a requirement of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) is well founded.

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2. The respondent is ordered to pay remuneration calculated in accordance with section 190 of the 1992 Act to all the above-mentioned claimants for the protected period.
3. The protected period is for 90 days from 13 April 2018 namely until 12 July 2018.
4. The Employment Protection (Recoupment of Benefits) Regulations 1996 apply (as amended). Regulation 6 imposes on the respondent a duty to provide information to the Secretary of State. Regulation 7 postposes this award in order to enable the Secretary of State to serve a recoupment notice under Regulation 8. The full effect of Regulations 6, 7 and 8 is set out in the Annexe to this Judgment.

Additional provisions applicable only to the named claimant

Claim Number 2501173/2018: Mr John Atkinson

5. The claim for a declaration of unauthorised deduction from wages is dismissed on withdrawal by the claimant.

Claim Number 2501252/2018: Mr Paul Kane

6. The claim for breach of contract in respect of contractual notice pay is stayed until 31 May 2019.

Claim Number 2503279/2018: Mr Alan Robson

7. It was not reasonably practicable for this claimant to present his claim for a protective award during the period of three months beginning with the date on which he was dismissed and it was presented within such further period as is considered reasonable pursuant to section 189(5)(c) of the 1992 Act.

Claim Number 2501148/2018: Mr Paul White

8. The claim for breach of contract in respect of contractual notice pay is stayed until 31 May 2019.

Claim Number 2501166/2018: Mr Paul Jardine

9. The claim for breach of contract in respect of notice pay is stayed until 31 May 2019.

NOTES

1. All the above claimants advanced individual claims for a protective award pursuant to section 189 of the 1992 Act and all claims succeed. This includes the claimants Paul White and Paul Jardine who did not attend the hearing as I am satisfied from reading their individual claim forms and from hearing evidence from the other claimants that such claims are well-founded.

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2. The administrators of the respondent had given leave for the claimants to pursue their respective claims for protective awards but the consent did not extend to any other claim advanced.
3. The claimants Paul Kane, Paul Robson and Paul Jardine advance claims for breach of contract in respect of contractual notice pay. These claims are stayed to enable those claimants to consider if they wish to seek consent from the administrators to proceed with those claims before this Tribunal.
4. Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by any party at the hearing or a written request is presented by any party within 14 days of the sending of this written record of the decision.
5. Public access to employment tribunal decisions
Judgements and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

EMPLOYMENT JUDGE A M BUCHANAN

**JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON 11 January 2019**

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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 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

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(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.