



EMPLOYMENT TRIBUNALS

Claimant: Mr D. Hodson

Respondent: (R1) W.H. Marren (In administration) c/o KPMG LLP
(R2) The Secretary of State for Business Energy and
Industrial Strategy

Heard at: Birmingham

On: 27 February 2020

Before: Employment Judge Dean (in chambers)

Representation

Claimant: No attendance

First Respondent: No attendance

Second Respondent: No attendance

JUDGMENT

The Judgment of the Tribunal is that the Tribunal declares that the complaint that the first Respondent failed to comply with the requirement of Section 188, the Trade Union and Labour Relations (Consolidation) Act 1992 is well founded and makes a protective award in respect of the Claimant and orders the First Respondent to pay to the Claimant the remuneration for the protected period at 90 days beginning on 19 July 2019.

REASONS

1. By a claim form presented on 11 September 2017, the Claimant claimed a protective award under Section 188, the Trade Union and Labour Relations (Consolidation) Act 1992 (TUL(C)RA).
2. The claim was considered on the papers. I considered the claim form and the responses together with information provided by the Claimant under cover of his letter dated 25 November 2019, delivered to the Tribunal by hand.
3. The Claimant was one of 48 employees, employed at one establishment by the first Respondent W.M. Mallen Limited who are now in administration. The Claimant together with his 47 colleagues was dismissed by reason of redundancy on the 19 July 2017.

4. There was no consultation about the proposed dismissals with appropriate representatives of any of the employees who may have been affected by the proposed dismissals. The first Respondent did not provide any meaningful information to the Claimant. The Claimant, who had commenced a period of holiday on the 15 July 2017, was contacted by a fellow employee on the 18 July 2017 who informed him that the gates of the Respondent business were closed and that all employees had been informed on the 17 July 2017 that the first Respondent was ceasing to trade and all employees were sent home.
5. The Claimant spoke to the Respondents administrators KPMG LLP at the Respondent company and he was informed that he would receive a letter confirming the terms of his redundancy.
6. The Respondent company did not recognise an independent trade union, nor did they take steps to arrange an election of employee representatives. I have been provided with no evidence to suggest that there were existing employee representatives with authority to receive information and to be consulted about the proposed dismissal and I find that no such consultation was undertaken either collectively, or with individual employees.
7. The first Respondent has not shown that there were any special circumstances which rendered it not reasonably practicable for it to comply with the requirement of Section 188 TULR(C)A.
8. Under Section 189 TULR(C)A the protected period is of such length as the Tribunal determines to be just and equitable having regard to the seriousness of the employer's default.
9. Taking into account the principles of Susie Radin -v- GMB and Others [2004] ICR 839 CA, I conclude that the first Respondent was in very serious default, given that no steps were taken to arrange the election of employee representatives, no information was provided (other than that the first Respondent had ceased to trade) and no consultation occurred. In the responses filed by the first and second Respondent, no mitigating circumstances have been identified to justify a reduction of the protective period below the maximum 90 days.
10. The Employment Protection (Recoupment of Jobseekers Allowance and Income Support) Regulations 1996 do not apply

Employment Judge Dean
2 March 2020