



EMPLOYMENT TRIBUNALS

Claimants: Mr A Akelaitis

Respondents: 1. Russell Hume Limited (in Voluntary Liquidation)
2. The Secretary of State for Business, Energy and Industrial Strategy

HELD AT: Remotely by CVP **ON:** 20 November 2020

BEFORE: Employment Judge Holmes

REPRESENTATION:

Claimant: In Person

Respondents: Did not attend and were not represented

JUDGMENT

1. The first respondent failed to comply with section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992.
2. The Tribunal makes a protective award in respect of the claimant.
3. The first respondent must pay remuneration to the claimant for the period of 90 days beginning on 19 February 2018.

REASONS

1. The code V in the header indicates that this was a CVP hearing, held because the Tribunal considered that the issues could be determined without the need for an in person hearing, and no party objected to that proposal.
2. The claim arises from the Administration, and then the Voluntary Liquidation of the first respondent. The first respondent, through its Liquidators, had entered a response to the claim. That response form, however, did not indicate at box 6.1 whether or not the claim was defended. A narrative was set out in which the history of the Administration and the dismissals for redundancy of the majority of the employees of the first respondent on 19 February 2018 was set out. The claimant, however, was not dismissed at that time, but was retained until he too was dismissed for redundancy on 24 October 2018.

3. The first respondent's response suggests that the claimant and other retained employees were kept up to date, and advised of their continued risk of redundancy though this period.
4. The second respondent also responded to the claims, but took a neutral stance, submitting "standard" submissions , and making generic observations on the law relating to protective awards.
5. Each respondent had confirmed that they would not be attending the hearing.
6. The claimant gave evidence on affirmation, and confirmed that the contents of his claim form were true. He also confirmed that there was no consultation with him during the period that he was employed by the first respondent until his dismissal in October 2018.
7. Being satisfied that there was a relevant failure to consult on the part of the first respondent, the claim therefore succeeds.
8. As explained to the claimant , a protective award is a two stage process. The Tribunal at this stage makes no financial award, but gives a judgment that the claimant is entitled to a protective award in the terms set out above. The claimant must then seek payment of his individual award from the first respondent (or the Secretary of State) , quantifying the same.
9. Failure to pay, or any dispute as to the amount payable, then becomes a matter for a further separate claim under s.192 of the Trade Union and Labour Relations (Consolidation) Act 1992 for payment of the award.
10. The claimant will presumably have been paid during the period of the protective award. This does not preclude the making of such an award, and, the Tribunal's understanding is, following repeal of s.190(3) of the Trades Union and Labour Relations (Consolidation) Act 1992 , that such sums cannot be set off against the employer's liability to make payment under the protective award. Any dispute as to the claimant's entitlement, however, in due course, can be further referred to the Tribunal.

Employment Judge Holmes
20 November 2020

SENT TO THE PARTIES ON
30 November 2020

FOR THE TRIBUNAL OFFICE

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