



EMPLOYMENT TRIBUNALS

Claimants: Mr I McConchie & Mr L McNicholas

Respondent: Weblight Limited (in Administration)

JUDGMENT

1. The respondent failed to comply with S.188 of the Trade Union and Labour Relations (Consolidation) Act 1992 and is ordered to pay a protective award in respect of each claimant for the period of 30 days beginning on 4 December 2018.
2. The respondent is reminded of its obligations under Regulation 6 of the Employment Protection (Recoupment of Benefits) Regulations 1996 to provide employee information to the Department for Work and Pensions. The Tribunal also reminds the respondent of the effect of Regulation 7 of those Regulations which is that the protective award is stayed until the Department serves a recoupment notice or alternatively indicates that no such notice is to be served. By Regulation 8 the respondent will be under a duty to make payments to the Department in the amounts set out in the recoupment notice. The respondent should consult the Regulations for their full meanings.

REASONS

1. These claims were considered by me in July 2019 and case management orders made which included provisions for determination of lead cases, namely Mr A Hossack in case number 3312431/2019, Mr A van Tonder in case number 3310915/2019, Mr C Chan in case number 3300520/2019 and Mr R Pearson in case number 3300575/2019.
2. In a reserved judgment sent to the parties on 30 October 2019 following a hearing on the 9 October 2019 before Employment Judge Palmer judgment was given in respect of case number 3310915/2019 Mr A van Tonder and case number 3300520/2019 Mr C Chan which

included protective awards from a period of 30 days beginning on the 4 December 2018. A judgment was made in favour of Mr Hossack for unfair dismissal and he was awarded a basic award and a compensatory award together with notice pay and also statutory rights. No judgment was made at that hearing in respect of Mr Pearson's claim.

3. The Tribunal having determined that the appropriate period for the protective award was a period of 30 days and the above cases having been designated as lead cases in accordance with the provisions of Rule 36 it is appropriate to make a judgment in favour of the above claimants of a protective award in respect of each claimant for a period of 30 days beginning on 4 December 2018.

Regional Employment Judge Byrne

Date: 15 January 2020

Judgment sent to the parties on

Date: 15 January 2020

For the Tribunal office

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
- a. (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
- (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.

Schedule of case numbers

3300575/2019	Pearson
3303320/2019	Robinson
3303634/2019	Evans
3300675/2019	Holmes
3310913/2019	Howell
3312431/2019	Williams
3312432/2019	Chan
3303428/2019	Kenmuir
3300645/2019	Graver
3300646/2019	Graver
3310822/2019	Baker
3310845/2019	Spurr
3310846/2019	Watt
3303675/2019	Mr I McConchie
3303676/2019	Mr L McNicholas