



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr P Atkinson

**Respondent:** Nova Display Ltd (In creditors' voluntary liquidation)

## JUDGMENT UPON RECONSIDERATION

**Upon reconsideration following the claimant's application for reconsideration dated 28 November 2021, the Judgment of the Tribunal made on 13 May 2021 and sent to the parties on 27 May 2021 is varied. The Judgment as varied is that:**

- 1) The claim is well-founded in that the respondent failed to comply with its statutory collective consultation obligations under Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 before proposed redundancy dismissals took effect at its establishment at Unit 1, Peckfield Business Park, Leeds, in respect of the whole workforce employed there.
- 2) Under Section 189(1)(d), (2), (3) and (4), the Tribunal makes a protective award in favour of the claimant and the respondent is ordered to pay him remuneration for a protected period of 90 days beginning on 4 December 2020.
- 3) The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply to the award.

## REASONS

1. By a claim form presented on 4 March 2021, the claimant claimed a protective award in respect of breach of the collective consultation requirements arising from his redundancy dismissal which he stated to have been on 7 December 2021. No response was presented to the claims by the respondent and its liquidators wrote on 12 May 2021 indicating they would not be attending the hearing which took place on 13 May 2021. The claimant gave oral evidence, which the Tribunal accepted in its entirety and it went on to make a protective award.

2. However, subsequently on 28 November 2021 the claimant applied for a Certificate of Correction for the Judgment (which had stated 7 December 2020 to be

his date of dismissal and the date the protected period ran from) in circumstances where the Redundancy Payment Service had been unable to pay the protective award since it understood his date of dismissal to be 4 December 2020 and not 7 December.

3. I was prepared to deal with his letter as a further application for reconsideration of the judgment within Rules 70 to 72 of the Employment Tribunals Rules of Procedure 2013, and also to extend the time period provided in Rule 71 for that purpose.

4. Under Rule 72(1), by letter dated 10 January 2022, the respondent was to provide any response to the application by 24 January 2022 but did not provide a response. That letter had set out my provisional view that it would be in the interests of justice to vary the judgment to show 4 December 2020 as the date of dismissal. Although the claimant provided a brief reply dated 13 January 2022, identifying some errors in dates set out in the Reasons (rather than the Judgment itself), neither party suggested that the reconsideration should not be carried out without a hearing. It has therefore been possible to reconsider my Judgment on the papers provided to me.

5. Accordingly, I make the following findings, which differ only from those made in the original Judgment and Reasons in respect of some corrected dates and the actual date of dismissal, which in turn determines the date the protected period runs from.

6. The respondent carried on business as commercial shopfitters and employed 40 employees including the claimant as Works Manager at Unit 1, Peckfield Business Park, Leeds, West Yorkshire. There was no trade union recognised for collective bargaining, consultation or negotiation with the workforce and there were no employees elected or appointed as representatives for the purposes of collective redundancy consultation.

7. Business was very slack in 2020 with most employees put on furlough leave between March 2020 and August 2020; then almost all staff returned to work to deal with orders. However, orders tailed off again and the respondent's Finance Director and shareholder told the claimant there were no orders in for December 2020 through to January to March 2021. Initially it was proposed to put staff back on furlough but insolvency practitioners were introduced and the decision was made to put the company into liquidation. On 1 December 2020, the claimant was instructed to call all the staff into a meeting on Monday 7 December, which he did.

8. However, on 4 December 2020, the insolvency practitioners took steps to terminate the employment of all staff with immediate effect. Therefore, when the meeting went ahead on 7 December 2020, the insolvency practitioners handed out letters confirming the termination of their employment to all staff present, holding small group meetings with different groups of employees.

9. There was no proper warning or notice given to or consultation with the workforce. No employee representatives had been elected or appointed for any such consultation within Section 188A of the 1992 Act. The dismissals of the whole workforce were put into effect at once on 4 December 2020 and confirmed on 7

December 2020. The respondent company was formally put into creditors voluntary liquidation on 10 December 2021.

10. In these circumstances, the respondent is in breach of the duty under Section 188 of the 1992 Act and the Tribunal makes an award under Section 189 in favour of the claimant for the maximum protected period of 90 days commencing on 4 December 2020.

11. The respondent is advised of the provisions of Regulation 5 of the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996, such that, within 10 days of the decision in these proceedings being promulgated or as soon as is reasonably practicable, the respondent must comply with the provisions of Regulation 6 of the 1996 Regulations and, in particular, must supply to the Secretary of State the following information in writing:

- (a) the name, address and national insurance number of the claimant; and
- (b) the date of termination of the employment of the claimant.

12. The respondent will not be required to make any payment under the protective award made until it has received a recoupment notice from the Secretary of State or notification that the Secretary of State does not intend to serve a recoupment notice having regard to the provisions of Regulation 7(2). The Secretary of State must normally serve such recoupment notice or notification on the employer within 21 days of receipt of the required information from the respondent.

Employment Judge Parkin

Date: 27 January 2022