



# EMPLOYMENT TRIBUNALS

## Claimants

## Respondent

- |      |                    |   |   |
|------|--------------------|---|---|
| (1)  | Orla Mulvenna      | v | The Collective (Living) Ltd (In Administration) |
| (2)  | Katie Marquardt    |   |   |
| (3)  | Erika Orsos        |   |   |
| (4)  | Portia Butterworth |   |   |
| (5)  | Marcus Hodges      |   |   |
| (6)  | Glonus Machado     |   |   |
| (7)  | Hamel Shah         |   |   |
| (8)  | Stephanie Smith    |   |   |
| (9)  | David Martin       |   |   |
| (10) | Vivek Patel        |   |   |
| (11) | Yanshu Cheng       |   |   |
| (12) | Aditya Patel       |   |   |
| (13) | Anh Ong            |   |   |
| (14) | Andre Damian       |   |   |
| (15) | Edward Callaghan   |   |   |
| (16) | Alison Beveridge   |   |   |
| (17) | Natalie Huggett    |   |   |

**(18) Eleanor Shazanah Sedgley**

**Heard at: London Central (by video)**

**Date: 8th March 2022**

**Before: Tribunal Judge McGrade acting as an Employment Judge (sitting alone)**

**Appearances**

Claimants: A Lewis (solicitor)

Respondent: No appearance

# **JUDGMENT**

The judgment of the Tribunal is that:

1. The Claimants' complaints under section 189 Trade Union and Labour Relations (Consolidation) Act 1992 of a failure by the Respondent to comply with the requirements of section 188 of the 1992 Act are well founded;
2. The Tribunal orders the Respondent by way of a protective award under section 189(3) of the 1992 Act to pay the claimants remuneration for the period of 90 days beginning on 17 September 2021.

# **REASONS**

1. The claimants presented claims for protective awards on 7 January 2022. By email dated 2 March 2022, the joint administrators confirmed they had no objection to a limited lift of the stay on proceeding for the purposes of continuing the action. No notice of appearance has been lodged on behalf of the respondent and they chose not to attend the hearing today.
2. The claimants were all employed by the respondent at the premises at 14 Bedford Square, London, WC1B 3GE. The respondent is a building and construction company, which employed around 62 members of staff, all based at Bedford Square.
3. Those claimants who attended work on 15 September 2021 were advised the respondent was entering into an insolvent administration and they were to be dismissed by reason of redundancy with effect from 17 September 2021. The remaining claimants received letters dated 17 September 2021 confirming they were to be made redundant with effect from 17 September 2021. No prior

warning of redundancies was given in advance of 15 or 17 September 2021. All employees were made redundant on 17 September 2021.

4. There was no recognised trade union or employer representatives in existence for the business.
5. Section 189 of the Act, so far as material, provides as follows:-
  - (1) Where an employer has failed to comply with a requirement of section 188 or section 188A, a complaint may be presented to an employment tribunal on that ground-
    - (a) in the case of a failure relating to the election of employee representatives, by any of the affected employees or by any of the employees who have been dismissed as redundant;
    - (c) in the case of failure relating to representatives of a trade union, by the trade union, and (d) in any other case, by any of the affected employees or by any of the employees who have been dismissed as redundant.
  - (1B) On a complaint under subsection (1)(a) it shall be for the employer to show that the requirements in section 188A have been satisfied.
  - (2) If the tribunal finds the complaint well-founded it shall make a declaration to that effect and may also make a protective award.
  - (3) A protective award is an award in respect of one or more descriptions of employees
    - (a) who have been dismissed as redundant, or whom it is proposed to dismiss as redundant, and
    - (b) in respect of whose dismissal or proposed dismissal the employer has failed to comply with a requirement of section 188, ordering the employer to pay remuneration for the protected period.
  - (4) The protected period –
    - (a) begins with the date on which the first of the dismissals to which the complaint relates takes effect, or the date of the award, whichever is the earlier, and
    - (b) is of such length as the tribunal determines to be just and equitable in all the circumstances having regard to the seriousness of the employer's default in complying with any requirement of section 188; but shall not exceed 90 days ...

6. I have considered the terms of **Suzie Radin v GMB 2004 ICR 893**. I note there was no consultation with the employees prior to the redundancies. In these circumstances I fix the period at 90 days.

#### **NOTE**

7. A protective award is a two stage process. The Tribunal at this stage makes no financial awards, 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 her individual award from the respondent (or the Secretary of State), quantifying the same.
8. 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.

Tribunal Judge McGrade  
Date 12 April 2022

JUDGEMENT SENT TO THE PARTIES ON: 12/04/2022

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