



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs Rebecca Bradshaw and others

**Respondents:** (1) Lion Hudson PLC (In administration)  
(2) Secretary of State For Business, Energy & Industrial Strategy

**Heard at:** Reading

**Before:** Employment Judge Gumbiti-Zimuto

**UPON** Consideration of the written representations of the claimants and the Secretary of State For Business, Energy & Industrial Strategy.

**AND UPON** the first respondent not presenting a response to the claim and there being no objection to the consideration of the claimants claim without the need for hearing

## JUDGMENT

1. The claims of all the claimants that the first respondent failed to comply with the requirements of section 188 Trade Union and Labour Relations (Consolidation) Act 1992 are well founded.
2. The Tribunal makes protective awards which order the first respondent to pay remuneration for a protected period which begins on 30 January 2017 and is ninety days in length. The protective awards relate to employees formerly employed by the first respondent at Wilkinson House, Jordan Hill Road, Oxford, OX2 8DR who were dismissed as redundant on or after 30 January 2017.
3. The hearing listed for 4 December 2017 will not take place.

## REASONS FOR JUDGMENT

1. In a claim form presented on the 19 May 2017 the claimants, Rebecca Bradshaw and others, claim a protective award pursuant to section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 ('TULRCA'). The respondents are Lion Hudson PLC (In administration) and the Secretary of State For Business, Energy & Industrial Strategy.

There is no response entered by Lion Hudson PLC (In administration) ('the respondent'). There is a response from the Secretary of State whose position is neither to resist or support the claim.

2. When a company is in administration, provisions of the Insolvency Act 1986 have the effect that no claim may be pursued without the consent of either the administrators or the court. In a letter dated 9 June 2017 the administrators have given limited consent in respect of the claimants seeking protective awards.
3. Where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less, the employer shall consult about the dismissals all the persons who are appropriate representatives of any of the employees who may be affected by the proposed dismissals or may be affected by measures taken in connection with those dismissals.
4. The consultation shall begin in good time and where the employer is proposing to dismiss 100 or more employees at least 90 days, otherwise, at least 30 days, before the first of the dismissals takes effect.
5. The appropriate representatives of any affected employees are, appropriately to the case, an independent trade union or employee representatives. The consultation shall include consultation about ways of avoiding the dismissals, reducing the numbers of employees to be dismissed, and mitigating the consequences of the dismissals.
6. Where an employer has failed to comply with a requirement of section 188 TULRCA a complaint may be presented to an employment tribunal on that ground, where section 189 (1) (d) TULRCA applies, by any of the affected employees or by any of the employees who have been dismissed as redundant.
7. If the tribunal finds the complaint well-founded it shall make a declaration to that effect and may also make a protective award.
8. A protective award is an award in respect of one or more descriptions of employees who have been dismissed as redundant, or whom it is proposed to dismiss as redundant, ordering the employer to pay remuneration for the protected period.
9. The protected period 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 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.
10. An employment tribunal shall not consider a complaint unless it is presented to the tribunal before the date on which the last of the dismissals to which the complaint relates takes effect, or during the period

of three months beginning with the that date, or where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented during the period of three months, within such further period as it considers reasonable.

11. The claimants were employed by the respondent from various dates to the 30 January 2017. The claimants were among around 30 employees who were based at the head office at Wilkinson House.
12. On 30 January 2017, the claimants were among 37 employees of the respondent were handed a letter by Katy Lever of FRP Advisory LLP and dismissed on the grounds of redundancy with immediate effect. FRP Advisory LLP are appointed administrators of the respondent.
13. The respondent failed to consult with the claimants prior to their dismissal contrary to section 188 TULRCA.
14. The claimants were not part of trade union; there were no elected employee representatives.
15. Protective awards are to be made in respect of all those employees of the respondent based at the head office who were dismissed on 30 January 2017.
16. The protected period begins with the date the on which the first of the dismissals to which this complaint relates took effect, 30 January 2017. This is the date on which I determine that the protective award period starts.
17. In **GMB v Susie Radin** [2004] IRLR 400 it was stated that Employment Tribunals (ET) in exercising discretion whether to make a protective award and for what period, to have the following matters in mind: (1) The purpose of the award is to provide a sanction for breach by the employer of the obligations in s. 188: it is not to compensate the employees for loss which they have suffered in consequence of the breach. (2) The ET have a wide discretion to do what is just and equitable in all the circumstances, but the focus should be on the seriousness of the employer's default. (3) The default may vary in seriousness from the technical to a complete failure to provide any of the required information and to consult. (4) The deliberateness of the failure may be relevant, as may the availability to the employer of legal advice about his obligations under s. 188. (5) How the ET assesses the length of the protected period is a matter for the ET, but a proper approach in a case where there has been no consultation is to start with the maximum period and reduce it only if there are mitigating circumstances justifying a reduction to an extent which the ET consider appropriate.
18. In determining what is just and equitable, the Tribunal's focus should be on the seriousness of the failure to comply. In a case of total failure to comply

a 90-day award is appropriate. It is no excuse or defence that the employees concerned may have suffered no loss.

19. In this case there was total non-compliance and therefore a period of 90 days is in my view appropriate.

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Employment Judge Gumbiti-Zimuto

Date: 8 November 2017

Sent to the parties on: .....

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For the Tribunals Office