



EMPLOYMENT TRIBUNALS

Claimant: Ms S Ahmed & others (see Schedule)

Respondent: Collective Spirit Free School

JUDGMENT

Employment Tribunals Rules of Procedure 2013, Rule 21

The respondent not having presented a response to the claim, and on the information before the Regional Employment Judge particularly in the witness statement of Mr N Dewhirst, NASUWT Senior Regional Official, dated 19 January 2018,

The judgment of the Tribunal 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 Butterworth Lane, Chadderton, Oldham, on 31 August 2017.
- 2) Under Section 189(1)(d), (2), (3) and (4), the Tribunal makes a protective award in respect of each claimant named in the Schedule and the respondent is ordered to pay remuneration to such claimants for a protected period of 90 days beginning on 31 August 2017.
- 3) The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply to these awards.

REASONS

1. By a claim form presented on 26 October 2017, the claimants claimed a protective award arising from their dismissals for redundancy on about 31 August 2017 which in turn resulted from the decision to close the respondent school at the end of the 2016/17 academic year.
2. No response was presented but the Regional Employment Judge was not initially prepared to issue a judgment under Rule 21. The claimants thereafter provided a comprehensive witness statement from Mr N Dewhirst, NASUWT Senior Regional Official, dated 19 January 2018.

3. From the information provided, the Tribunal makes the following findings. The respondent Free School opened in September 2013 in Chadderton, Oldham. It never recognised NASUWT or any other trade union for collective bargaining, consultation and negotiation on behalf of employees, especially teachers. It employed approximately 25 members of staff. On 29 June 2017, the local NASUWT representative Paul Stott was notified, along with other trade union representatives and the local authority, that the school would close at the end of the academic year. Employees were notified that same day or soon afterwards. However, there was no appointment of employee representatives or opportunity for election of employee representatives within Section 188A. No valid consultation within the meaning of Section 188(2) and (4) of the Trade Union and Labour Relations (Consolidation) Act 1992 was carried out before the redundancy dismissals were put into effect. The dismissals affected all members of staff and took place on or about 31 August 2017.

4. In these circumstances, the respondent is in breach of the duty under Section 188 and the Tribunal makes an award under Section 189 in favour of all claimants who were dismissed as redundant on the closure of the school for the maximum protected period of 90 days commencing on 31 August 2017.

5. Recoupment

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 every employee to whom the award relates; and
- (b) the date of termination of the employment of each such employee.

6. The respondent will not be required to make any payment under the protective awards 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.

Regional Employment Judge Parkin

Date 29 January 2018

JUDGMENT SENT TO THE PARTIES ON

29 January 2018

FOR THE TRIBUNAL OFFICE

Collective Spirit Free School (schedule)

Case Number	Claimant Name	Current Position
2421330/2017	Ms S Ahmed	Case closed
2421390/2017	Miss S Bibi	Case closed
2421391/2017	Mr A Farrand	Case closed
2421392/2017	Miss L Hadfield	Case closed
2421393/2017	Mrs S Howarth	Case closed
2421395/2017	Mrs A Sheppard	Case closed
2421396/2017	Mr J Weldon	Case closed
Number of Cases	7	

Claimant: Ms S Ahmed & Others (see attached schedule)

Respondent: Collective Spirit Free School

**ANNEX TO THE JUDGMENT
(PROTECTIVE AWARDS)**

Recoupment of Jobseeker's Allowance, income-related Employment and Support Allowance and Income Support

The following particulars are given pursuant to the Employment Protection (Recoupment of Jobseekers Allowance and Income Support) Regulations 1996, SI 1996 No 2349, Regulation 5(2)(b), SI 2010 No 2429 Reg.5.

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:

- (i) 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

- (ii) 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 protective period falling before the date described in (i) above.

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.

Collective Spirit Free School

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