

# **Kostal UK (Respondent) v Dunkley and others (Appellants)**

**Case ID: UKSC 2019/0153**

## **Case summary**

### **Issue**

(1) Whether a "prohibited result" under s. 145B Trade Union and Labour Relations Consolidation Act 1992 can only arise in circumstances where direct offers to employees take terms outside the scope of collective bargaining on a permanent basis.

### **Facts**

Kostal UK Ltd employed Mr Dale Dunkley and the other appellants, who are all members of "Unite," a trade union. Kostal and Unite signed a Recognition and Procedural Agreement in February 2015, and formal pay negotiations commenced in October 2015. Following the inception of such negotiations, Kostal made an offer to the appellants. Mr Coop (on behalf of Unite) gave Unite's members a "free vote," neither recommending acceptance nor rejection of the offer, in a forthcoming ballot. The ballot took place in December 2015, and just under 80% of members voted to reject the proposal. By letter dated 10 December 2015, Mr Johnson of Kostal sent a letter to all employees, making the offer that had been rejected by ballot to each employee directly. The reason given for doing so was that, given the short timeframe, the offer was made to employees directly so that a Christmas bonus could be paid before the end of the year. Mr Coop wrote to Mr Johnson on 14 January 2016 putting him on notice that he believed the letter making the offer directly to employees was a breach of S. 145B of the Trade Union and Labour Relations Consolidation Act 1992. Mr Johnson responded by letter dated 29 January 2016 rejecting that contention.

## **Judgment appealed**

[\[2019\] EWCA Civ 1009](#)

## **Parties**

### **Appellant(s)**

Dunkley and others

### **Respondent(s)**

Kostal UK Ltd

## **Appeal**

### **Justices**

Lord Briggs, Lady Arden, Lord Kitchin, Lord Leggatt, Lord Burrows

### **Hearing start date**

18 May 2021

**Hearing finish date**

18 May 2021

**Watch hearing**

18 May 2021 [Morning session](#) [Afternoon session](#)

**Judgment details**

**Judgment date**

27 October 2021

**Neutral citation**

[2021] UKSC 47