



EMPLOYMENT TRIBUNALS

Claimant

Mr S Ali & others

Respondent

**v Caparo Precision Tubes Limited &
others & Secretary of State for BIS**

HEARING

Heard at: Birmingham

On: 21,22 August 2017

Before: Employment Judge Broughton

Members: Mr R Virdee

Mr J Reeves

Appearance:

For the Unite Claimants: Mr C Baker

For the Community Claimants: Mr G Williams

For the GMB Claimants: Mr D Tolcher

For the First Respondents: no appearance

For the Second Respondent: no appearance

JUDGMENT

The first respondents in each of the consolidated claims (Caparo Precision Tubes Limited, Caparo Engineering Limited and Caparo Precision Strip Limited) acted in breach of s.188 Trade Union and Labour Relations (Consolidation) Act 1992 (TULRA).

In relation to Caparo Precision Tubes Limited and Caparo Engineering Limited the protected period is 90 days beginning on 30 October 2015.

In relation to Caparo Precision Strip Limited the protected period is 90 days beginning on 18 December 2015.

The awards are made in relation to the following groups of employees:

Caparo Precision Tubes Limited

– all employees dismissed as redundant in October 2015 from the company’s Popes Lane, Oldbury site and

- all hourly paid shop floor employees dismissed as redundant in October 2015 from the West Bromwich site trading as Caparo Drawn Products

Caparo Engineering Limited

- all hourly paid shop floor employees dismissed as redundant in October and November 2015 from the Dudley site trading as Caparo Forging Europe Dudley

Caparo Precision Strip Limited

- all employees dismissed as redundant in December 2015 from the Ductile site in Willenhall

Employment Judge Broughton

22 August 2017

SUMMARY REASONS

1. It was confirmed that the only claims before us at this hearing related to claims for a protective award for an alleged failure to collectively consult in relation to proposed redundancies at various Caparo group company sites where it was alleged that there were recognised union(s) and over 20 redundancies were proposed and made towards the end of 2015.
2. Those claims were, therefore, made under ss.188 and 189 TULRA 1992.
3. None of the respondents attended or were represented but we were invited to consider their pleadings and representations in their absence.
4. In relation to claims against Caparo Precision Tubes Limited, 2 unions were claiming recognition at the same establishment, Unite (1300351/16) for staff and the GMB (1300380/16) for the hourly paid shop floor workers. Recognition was conceded by PWC on behalf of the respondent on 8 June 2017.
5. There were also claims against Caparo Precision Tubes Limited t/a Caparo Drawn Products (1300366/16) at a different site in West Bromwich. Those claims were also brought by the GMB in relation to the hourly paid shop floor workers. Again, recognition was conceded by PWC on behalf of the respondent on 8 June 2017.
6. The GMB also brought claims against Caparo Engineering Limited trading as Caparo Forging Europe Dudley (1300404/16). We heard and saw unchallenged evidence that the GMB were recognised at the Dudley site in relation to the hourly paid shop floor staff. Specifically, we heard and saw evidence of collective bargaining over many years and note that the respondent's communication purportedly starting the redundancy consultation process on 28 October 2015 was sent to Mr Homer, the GMB site representative, albeit the evidence before us was that Mr Homer received none of the information allegedly enclosed with that communication.
7. Accordingly, we accept that the GMB were recognised notwithstanding the absence of a formal recognition agreement which is not, in our experience, unusual.
8. Community the union brought claims against Caparo Precision Strip Limited (1300674/16). We heard and saw unchallenged evidence that they were the recognised union at the Ductile site in Willenhall, again including evidence of collective bargaining over many years.
9. We therefore accept that each of the unions claiming in respect of the various bargaining units had standing to bring such claims.

10. We also note that in each of the claims there was, understandably, an alternative argument advanced that, if it were held that there was no recognised union, the individuals themselves brought the claims in their own right. If we were wrong on recognition we would have found that the individuals had standing to bring such claims and our conclusions in respect of the protective awards would have been the same.

11. We heard that many of the Caparo group of companies were in considerable financial difficulties in the summer of 2015 due to the challenges faced by the steel industry at the time.

12. A number of those companies were put into administration on 19 October 2015 and PWC were the appointed administrators.

13. Whilst there were some ad hoc communications with a minority of the union representatives these were limited to general discussions about the administration itself and the hopes of securing buyers for some or all of the business.

14. It was not seriously contended that any redundancies were proposed until 28 October 2015 at the earliest and, in relation to Caparo Precision Strip Limited, that date was 18 December 2015.

15. We heard that most of the union representatives did not receive copies of any HR1 forms filed until after the employees were dismissed.

16. Whilst it does appear that there may have been some notification on 28 October 2015 on some sites of potential redundancies there was no evidence of any meaningful or reasonable attempt to comply with the requirements of s188(4) TULRA.

17. The documents that we did see were vague and unhelpful and, in any event, most of the union representatives claimed not to have seen or received them. There was no such documentation in relation to Caparo Precision Strip Limited.

18. At each of the sites where redundancies were made on 30 October 2015 we heard that they came as a complete shock to the unions and employees alike. Employees were simply called in to mass meetings and told they were being dismissed as redundant with immediate effect. That was the same whether some were being retained or the whole site was closing.

19. Whilst it happened later we heard that there was no proposal to make redundancies at Caparo Precision Strip Limited until 18 December 2015 and the employees were dismissed and the site closed the same day.

20. From all the evidence we heard and saw there was no evidence of any consultation, meaningful or otherwise, about the redundancies, either before or after redundancies were proposed. Specifically, there was no consultation about any of the matters required to be consulted about set out in s188(2) TULRA.

21. There was also no consultation about any of the matters required to be communicated under s188(4) TULRA, despite that having been the legitimate expectation of the unions concerned.

22. In those circumstances, each of the first respondents have clearly breached their duty under s188 TULRA. The maximum notification of potential redundancies was the two days between 28 and 30 October 2015. In most cases the unions were unaware of the proposed redundancies until the day they were made and, in some cases, not even until after they had been made.

23. Whilst it appears that some information was provided to the GMB in relation to Caparo Precision Tubes Limited that information was vague and unhelpful and did not meet the requirements of s188(4) nor did it lead to any consultation and so we see no just reason for treating them any differently.

24. The failings in relation to consultation were absolute in all cases. Those failings were very serious.

25. Applying the principles laid down in *Susie Radin Ltd v GMB* 2004 ICR 893, CA we must start at the maximum award of 90 days and reduce it only if there were mitigating circumstances.

26. We heard no evidence of any such mitigating circumstances and, on the evidence before us, we can see no good reason for the first respondents not having engaged in at least some meaningful consultation and given more notice of the pending redundancies.

27. Whilst we note that the first respondents did argue special circumstances in their responses to the tribunal we also heard no evidence in relation to the same. It is well established that the fact that a company may be in administration is not, of itself, a special circumstance and we heard no evidence to suggest that this insolvency was sufficiently out of the ordinary or unexpected such as to excuse the employer's failure. Indeed, all of the evidence we did hear suggested otherwise.

28. Even if some information was provided to the GMB at Caparo Precision Tubes there was still no consultation with them and so we see no reason to treat them differently.

29. We heard that some staff were retained briefly at Caparo Engineering Limited to assist with the closure of the business. Those made redundant in November 2015 were clearly part of the same exercise.

30. Accordingly in respect of all classes of employees outlined in our judgment we find that the protected period should be the full 90 days. There was no consultation. The breaches of s188 were very serious. There were no special circumstances and no good reasons to reduce the award. It is, therefore, just and equitable to award the maximum prescribed by statute.