EMPLOYMENT TRIBUNALS

Claimants: **Julie Blakemore and others (see schedule)**

Respondent: **Testerworld Limited (in administration)**

Rule 96 party: **Secretary of State for Business and Trade**

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

1. The claimants' claims that the respondent failed to comply with the requirements of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 in respect of their dismissals are well founded.

2. The Tribunal orders the respondent, by way of protective award under section 189(3) of the 1992 Act, to pay to each of the claimants a payment equivalent to remuneration for the period of 90 days beginning on 9 May 2022.

Recoupment

3. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply to this award. The protected period is the period of 90 days beginning on 9 May 2022.

Reasons

1. Each of the claimants named in the schedule has made a complaint under section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 on the ground that the respondent failed to comply with a requirement of section 188 in respect of his or her dismissal. The respondent company's administrators have given consent for the claims to continue.

2. The respondent has not presented a response to the claims.

3. I have decided that a determination can properly be made of the complaints on the available material.

4. On the available material I am satisfied of the following.

a. As at 9 May 2022 the respondent was proposing to dismiss as redundant, within a period of 90 days or less, 20 or more employees who were assigned to carry out their duties at the respondent's depot at Hainge Park, Tividale, Oldbury.

b. The claimants were employees of the respondent who may be affected by the proposed dismissals. They were assigned to carry out their duties at the respondent's depot at Hainge Park, Tividale, Oldbury. They were dismissed as redundant on 9 May 2022.

c. For the purposes of section 188 Trade Union and Labour Relations (Consolidation) Act 1992, the respondent's depot at Hainge Park, Tividale, Oldbury was either an establishment in itself or it was part of a larger unit constituting an establishment. In order to determine the claimants' claims it is unnecessary for me to decide which of those two possibilities was in fact the case.

d. The respondent was required to consult about the dismissals all the persons who were 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: section 188 Trade Union and Labour Relations (Consolidation) Act 1992. For the purposes of the consultation, the respondent was required to disclose in writing to the appropriate representatives the information set out at section 188(4) of the Act.

e. The claimants were not employees of a description in respect of which an independent trade union was recognised by the respondent.

f. There were no employee representatives appointed or elected by the affected employees otherwise than for the purposes of section 188, who had authority from those employees to receive information and to be consulted about the proposed dismissals on their behalf.

g. There were no employee representatives elected by the affected employees, for the purposes of section 188, in an election satisfying the requirements of section 188A(1). The respondent did not invite the claimants to elect such representatives. The respondent did not consult with any of the claimants individually about the proposed redundancies.

h. Each of the claimants is entitled to make a complaint under section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 on the ground that the respondent failed to comply with a requirement of section 188 in respect of his or her dismissal.

i. The respondent failed to comply with the requirements of section 188 in respect of each of the claimants' dismissals.

j. The respondent has not shown that there were special circumstances which rendered it not reasonably practicable for the employer to comply with any requirement of section 188.

k. Each of the complaints was presented to the tribunal within the period of three months beginning with the date on which the claimant's dismissal took effect (taking into account section 292A).

5. The claimants' complaints under s189 are well founded.

6. Section 189 provides as follows:

> (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

7. I have determined that it is appropriate to make a protective award under section 189 in respect of each of the claimants.

8. In determining the length of the protected period I have had regard to the seriousness of the employer's default in complying with the requirements of section 188 and borne in mind guidance given in the case of GMB v Susie Radin Ltd [2004] EWCA Civ 180, [2004] IRLR 400.

9. I am satisfied on the material available that this a case where there has been no consultation at all in relation to the claimants' proposed dismissals and there are no mitigating circumstances. Therefore, it is just and equitable that the length of the protected period in the case of each claimant should be the maximum of 90 days.

Employment Judge **Aspden**

Date: 6 December 2023

Case No: 2502656/2023 and others (see schedule)

Schedule of claimants

Claim number	Name
2502656/2023	JULIE BLAKEMORE
2502657/2023	SARAH BRADSHAW
2502658/2023	MIRIAM BREWER
2502659/2023	JORDAN CHONG
2502660/2023	LILY CLARK
2502661/2023	JODIE CONROY
2502662/2023	MANJIT DHAMI
2502663/2023	KAREN HATTON
2502664/2023	ADEDAYO JOHN
2502665/2023	JATINDER MAHAL
2502666/2023	APRIL MORGAN-HORTON
2502667/2023	MELANIE NEALE
2502668/2023	JONATHAN PERRIN
2502669/2023	HARJIT PAUL SINGH
2502670/2023	ZOHEEL TARIQ
2502671/2023	LOUIS TROMANS
2502672/2023	ZOE WATTON