



Ex City Link employees awarded 90 days' pay by Employment Tribunal

It was a bleak Christmas Day in 2014 when around 2,727 employees learned that their employer, City Link (a parcel delivery company), was insolvent and that they would lose their jobs. To add insult to injury, they learned this information through the media and the RMT rather than City Link itself. By New Year's Eve all employees were redundant and around 1,000 self-employed drivers lost their income.

On 23 May 2016 the Leeds Employment Tribunal decided in favour of the City Link former employees in relation to City Link's failure to consult with them about impending redundancies and awarded the maximum award: 90 days' gross salary per eligible employee.

Background

The evidence given in the Employment Tribunal indicated that in April 2013 City Link had not been profitable for a significant period by the time it was acquired by Better Capital for £1, and a cash injection of £40 million was made. Unfortunately, by early 2014 it became clear that, despite various cost cutting measures, City Link would make a significant loss – a projection that worsened as the year went on.

By late Summer, City Link had approached Better Capital for additional funding to finance a turnaround plan, however, a decision was not given until December of that year.

In September/October 2014, City Link was exploring ways to survive. Proposals included potentially selling the business, closing the business, going into administration, or adopting a leaner business model going forward. It was acknowledged at this point that mass redundancies would be necessary (except if the business was sold) and that a 45-day redundancy consultation period with the employees would be required.

By early November 2014, with only insolvency or cutting costs through a 'lean business' approach as viable options, City Link opted to move forward with the latter, which would involve the closure of 17 depots and an additional cash injection. Despite both options involving mass redundancies City Link did not commence a consultation about redundancy.

On 22 December 2014, City Link was informed that a cash injection would not be forthcoming. Evidence was given in the Employment Tribunal that it was believed that this decision had been delayed so as to ensure City Link would make as much money as possible in the run up to Christmas, the busiest time of the year, before it became insolvent, although Better Capital has rejected this assertion. Following this decision, City Link's Board resolved to put the company into insolvency in the period between close of business on Christmas Eve and before opening on 26 December 2014. However, a leak to the RMT who passed on the information to the media and the employees caused City Link to appoint Administrators at 7pm on Christmas Eve.

Throughout this whole process employees had been kept in the dark. Whilst City Link was aware of the possibility of mass redundancies and its redundancy consultation obligations they did not conduct any kind of consultation process.

The Law

Employers must, where they are proposing to make 20 or more employees at one establishment redundant within a period of 90 days or less, consult about redundancies. Such consultation must begin in good time and be for a minimum of 30 days. That period is greater where over 100 employees are being made redundant in one establishment. In this case, employers must consult for at least 45 days. This obligation is set out at clause 188 of the Trade Union and Labour Relations (Consolidation) Act 1992.

Failure to consult gives rise to a claim for a "protective award". Such award is intended to be penal in nature and an Employment Tribunal has a wide discretion to award what is just and equitable in the circumstances. The maximum amount an Employment Tribunal can award is up to 90 days' gross pay per employee.

The Findings

The Employment Tribunal made a number of findings that were critical of City Link and Better Capital. It found that there had been no consultation at all and that the failure to consult was an "extremely serious default" particularly as City Link and Better Capital had made a conscious decision, for their own financial benefit, not to inform employees of the situation or carry out any consultation. City Link had been fully aware of the possibility of mass redundancies and its legal obligations in this regard and had consciously made the decision not to comply with them. The Employment Tribunal found that there were no mitigating factors and, therefore, it was just and equitable to award the maximum award; namely 90 days' pay.

Who will pay?

Whilst the former employees of City Link may feel a sense of justice it is highly unlikely that City Link will be in a position to pay these sums to employees given its insolvency. In this situation, the former employees may apply to the National Insurance Fund for up to 8 weeks' wages; a week's pay being capped at the statutory rate (which was £464 in December 2014).

Criminal Prosecutions

Employers must, if proposing to make 20 or more employees at one establishment redundant within a period of 90 days or less, notify the Secretary of State. Failure to do so could result in a fine of up to £5,000.

The Department of Business Innovation and Skills (BIS) brought a claim against the former Managing Director, Finance Director and Non-Executive Director of City Link. It was alleged that the Directors had become aware of the need for redundancies on 22 December 2016, but failed to inform the Secretary of State until 26 December 2014. The Directors were acquitted of the charge. They gave evidence that they genuinely believed a sale from administration was probable.

If you require advice on collective redundancies please do not hesitate to contact Rima Mehay at rima.mehay@adamsandremers.com or on 020 7024 4803.

This article is not intended to be a full summary of the law and advice should be sought on all issues.

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