EMPLOYMENT TRIBUNALS

Claimants: Mrs A Acquisto and 15 others (see schedule)

Respondents:
1. Magellan Robotech Ltd
2. Stanleybet Services Ltd

HELD AT: Manchester **ON:** 23 April 2021

BEFORE: Employment Judge Slater
Mr A G Barker
Mr I Taylor

REPRESENTATION:

Claimant: Mr Armstrong, non-legal representative
Respondents: Ms Keogh, counsel

JUDGMENT

The unanimous judgment of the Tribunal is that the claims for a protective award under section 188 Trade Union and Labour Relations (Consolidation) Act 1992 are not well founded and are dismissed.

REASONS

Introduction

1. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was a video hearing (Cloud Video Platform).

Claims and issues

2. This was a hearing to determine whether or not the Tribunal has jurisdiction to hear a claim under section 188 Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) and, if so, whether there was a breach of section 188 TULRCA.

3. The issues to be determined at this hearing were identified at a private preliminary hearing on 24 November 2020 and set out in Appendix A to the record of that hearing as follows:

> "Section 188(1) states "Where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less the employer shall consult about the dismissals all the persons who are 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".
>
> "The Tribunal will consider whether there were 20 or more employees at "one establishment" for the purposes of section 188(1). The respondent says each employer proposed to make redundant less than 20 employees. The claimants say there is a link between the respondents and the word "establishment" should be read as referring to more than one employer because the companies are linked.
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> "If the Tribunal accepts it has jurisdiction to hear the claim, it will consider whether collective consultation took place in accordance with the remainder of section 188."

4. The respondents say that no collective consultation obligations under section 188 TULRCA arose because neither of the respondents proposed to dismiss as redundant at least 20 employees within the relevant time period.

5. At the preliminary hearing on 24 November 2020, Mr Armstrong, on behalf of all the claimants, agreed that all the claimants were employed by either what are now the first and second respondents to the claim (a further respondent was dismissed from proceedings at that preliminary hearing). He argued that the two respondents are linked because they are in the same group of companies and so an establishment" within the meaning of section 188(1) of TULRCA because the word establishment should be read to include both respondents.

6. At this final hearing, the respondents, in Mr Pounder's witness statement, had identified which of the claimants were employed by the first respondent and which by the second. Mr Armstrong did not agree that these lists correctly identified the employers of the claimants. He asserted, apparently for the first time, that all the claimants were, at the time the dismissals were proposed, employed by the first respondent and not by any other company. He argued that all the claimants who began their employment by 2018 had been employed by Stanley International Betting Limited (SIB Ltd) which changed its name to the name of the first respondent. Those employed after 2018 were employed by the first respondent

because, although the offer letters gave the name of the second respondent, the company registration number on the letters was that of the first respondent.

7. The argument that all the claimants were employed by the first respondent took the respondents by surprise. However, after an adjournment during which she took instructions, Ms Keogh informed the Tribunal that the respondents did not ask for a postponement and were able to deal with the issue as to which company each of the claimants was employed by.

8. The revised issues for the Tribunal to address were, therefore:

8.1. Who was the employer of each of the claimants at the time dismissals were proposed?

8.2. Was the employer of the claimants proposing to dismiss 20 or more employees at "one establishment"?

The respondents conceded that, if the duty to consult under section 188 TULRCA arose, they did not comply with that duty.

Evidence

9. The claimant heard evidence for the respondents from Mark Pounder, Group Head of HR for Stanleybet Services Limited. There was a witness statement for Mr Pounder and he gave oral evidence.

10. There were witness statements for three of the claimants: Alessandra Acquisto, Samuele Saccardi and Francesca Davis. Only Ms Acquisto attended the hearing to give oral evidence. The respondents did not object to the Tribunal reading the statements of Mr Saccardi and Ms Davis and giving them such weight as we considered appropriate.

11. There was an agreed bundle of documents. During the course of the hearing, two additional documents were produced: contracts for Mr Palin and Ms Chiamenti.

Facts

12. The respondents are companies in the Stanleybet Group of companies (the Group). The Group has many separate legal entities across Europe. The Group was established in 1958 as a sports betting company. The ultimate holding company is now Stanleybet Holdings Ltd. Giovanni Garrisi is the owner of the Group. The Group's UK operation is based in Liverpool.

13. The first respondent, Magellan Robotech Limited (MRL), company number 03357517, is a company which, until a name change on 2 January 2018, was called Stanley International Betting Limited (SIB Ltd).

14. The second respondent, Stanleybet Services Limited (SSL), company number 09061264, is a company which, until a name change on 2 January 2018, was called Magellan Robotech Limited.

15. On 22 December 2017, Mr Garrisi sent a memo to all management and staff in Liverpool, Malta and Gibraltar, informing them of a group reorganisation. He wrote that, from 1 January 2018, the activities of the UK operations of the group were being split across three companies: MRL was to focus upon the provision of software services to B2B companies; SSL was to deal with activities that fell outside the new business focus, described as, in essence, an internal service company to the other Stanleybet Group companies; and Stanleybet Holdings Ltd was to deal with certain group management functions. A table indicated that, by function, the IT department would be with MRL, directors would be with Stanleybet Holdings Ltd and everybody else would be with SSL. Mr Garrisi wrote that, for all practical purposes, there would be no impact on the employee's employment rights were in no way affected; for legal rights purposes, it was as if they were still employed by SIB.

16. Although Mr Garrisi had said the change would take effect from 1 January 2018, Companies House records show that the relevant changes of name as taking effect on 2 January 2018. Companies House records also show that the resolutions to change the companies' names were passed on 22 December 2017 and notice of the resolution received by Companies House on 23 December 2017.

17. All the claimants were employed at the Group's Head Office in Liverpool. MRL and SSL share the same premises.

18. MRL and SSL had the same company directors as each other in the period May to August 2020. Mr Garrisi was one of these directors.

19. On 18 May 2020, the Group announced that redundancies would be taking place across each of the separate businesses.

20. The Group took the view that SSL and MRL were not legally required to undertake collective consultation in accordance with section 188 TULCRA. SSL considered that it employed 43 people in Liverpool out of which it identified 16 as being potentially at risk of redundancy. MRL considered that it employed 83 employees at Liverpool, out of which it identified 19 as being potentially at risk of redundancy.

21. It is common ground that no steps were taken towards collective consultation as would be required if section 188 TULRCA applied.

22. Mr Armstrong raised issues about who took the decisions about the number of employees of each respondent at risk of redundancy; whether the first and second respondents took decisions or whether the decisions were taken by Mr Garrisi. It is not necessary for us to make any findings of fact about who made the decisions about how many employees each respondent was to propose to dismiss as redundant since the responsibility for consultation lies on the relevant employer,

whether or not that employer has been instructed, for example by a parent company, to make those redundancies.

23. We accept Ms Acquisto's evidence that she was told by her line manager that Mr Garrisi had told her line manager that there had to be one architect and one graphic designer left. Ms Acquisto understood from the conversation that Mr Garrisi had told her line manager who was to stay and who was to be made redundant.

24. The claimants were all selected for redundancy and dismissed.

25. We were shown copies of contractual documentation for all the claimants except for Ms Acquisto. Neither the respondents nor Ms Acquisto were able to produce a copy of a contract of employment.

26. We deal with each claimant in turn, and the documentation or other evidence relevant to the identity of their employer at the time of the proposal to dismiss employees as redundant.

Alessandra Acquisto

27. Ms Acquisto worked with the Group from 2009. She started to work in the UK with effect from 1 January 2018. Before this, she was based in Gibraltar, working for Tricolo Services Ltd, another Group company. The respondents assert that she was sent a copy of the contract of employment with SSL to sign that she did not return this. The respondents have been unable to produce a copy of the contract from their own records. Mr Pounder suggested that the respondents' electronic copy may have been lost during a cyber attack in 2019. Mr Pounder was informed by an HR colleague that a contract had been sent to Ms Acquisto when she returned from Gibraltar but she had not returned a signed copy.

28. Email correspondence between the claimant and Mr Pounder in June 2020 in which Ms Acquisto gives permission to look in her desk drawer to try to find a copy of her contract of employment suggests, at the least, that Ms Acquisto thought at that time she might have been given a copy of a contract of employment. However, none was found.

29. When it was put to Ms Acquisto during cross examination that she was employed by the second respondent when she started working in the UK on 1 January 2018, she said she was not sure. She said it was never clearly stated that she worked for SSL.

30. A pay review for Ms Acquisto in 2019 is headed Stanleybet Services Ltd but the company number at the bottom of the notepaper is that of MRL. There is no evidence of Ms Acquisto querying at the time the correct identity of her employer. Although Ms Acquisto now suggests, based on the company number on the notepaper, that she was employed by MRL, we find that Ms Acquisto was not led to believe, at the time she received this pay review, because of the company number, that she was employed by MRL, rather than by SSL. It would be unusual for an employee receiving such a document to check that the company number matched

the name of the company on the notepaper and Ms Acquisto did not suggest in evidence that she did this. She said she just looked at the pay review and put it away but, looking at it again, she is confused. We consider that, if Ms Acquisto had believed at the time that she was employed by MRL rather than SSL, she would have queried the name of the employer on her pay review. She did not. We find that Ms Acquisto did not believe, in 2019, that her employer was MRL rather than SSL.

31. Payslips to Ms Acquisto were issued in the name of SSL. Some references on salary payments by bank transfer Ms Acquisto's bank statements in early 2018 are to Magellan Robotech SIB Ltd. Later transfers have the reference SER payroll SIB Ltd.

32. Ms Acquisto was a Design Manager. She coordinated the internal workflow of the design team and also managed master projects across the Group.

33. Ms Acquisto accepted that, as part of her duties, she recruited into SSL. She and other employees were told that SSL was a shared function across the Group.

34. Ms Acquisto had a red lanyard. IT people had a blue lanyard.

35. The letters relating to redundancy were sent with the Group heading on the notepaper.

36. Ms Acquisto's witness statement does not identify which company she believes she was employed by. She asserts, however, that they all work as one socio-economic unit. She said in oral evidence, after initially saying she was not sure whether she was employed by SSL, that she believed she was employed by MRL. We consider it unlikely, in the light of the other evidence, that this was Ms Acquisto's belief whilst still employed by a Group company. If Ms Acquisto has now formed this view, we find that it is a view formed subsequently, understanding that this would assist the claim for a protective award and that Ms Acquisto did not believe at relevant times that she was employed by MRL.

Samuele Saccardi

37. The letter dated 13 November 2018 offering employment is on SSL notepaper, the company name appearing at the top and bottom of the letter. No company number is printed on the notepaper.

38. Mr Saccardi provided a short witness statement. He wrote that he worked for Stanleybet for more than a year. He wrote: "I have been hired as Stanleybet staff with no mention of Magellan Robotech whatsoever in my contract."

Claudia Fiori

39. The letter dated 6 March 2019 offering employment is on SSL headed notepaper. The name at the bottom of the notepaper is Stanley International Betting Limited (the former name of MRL). The company number at the bottom of the notepaper is that of MRL. We consider it more likely than not that the inclusion of the

name of Stanley International Betting Limited and the company number for MRL at the bottom of the notepaper was a clerical error.

Elisa Chiamenti

40. A statement of terms and conditions of employment with an effective date of 1 May 2018, identifies Ms Chiamenti's employer as SSL. Her continuous employment is stated to have started on 6 December 2010. The copy of the contract we have been provided with is not signed. We have no evidence to suggest that the contract was not issued to Ms Chiamenti and there are contracts issued to other employees at the same time which would be consistent with the contract having been issued to Ms Chiamenti. We have no evidence suggesting Ms Chiamenti's employer was any company other than SSL.

Alberto Malfitano

41. The letter offering employment as a credit controller dated 13 June 2012 is on Stanley International Betting Limited notepaper.

42. A contract with an effective date of 1 May 2018 identifies Mr Malfitano's employer as SSL. The contract was signed by Mr Malfitano on 13 June 2018.

Andrea Barlottini

43. The offer of employment dated 18 December 2018 is on SSL headed notepaper. The name at the bottom of the notepaper is Stanley International Betting Limited (the former name of MRL). The company number at the bottom of the notepaper is that of MRL. We consider it more likely than not that the inclusion of the wrong company number was a clerical error.

44. A contract with an effective date of 21 January 2019 identifies Andrea Barlottini's employer as SSL. The copy of the contract was signed by Andrea Barlottini on 21 January 2019.

Lee Wallace-Piercy

45. The offer of employment dated 16 February 2018 is on MRL headed notepaper. The name at the bottom of the notepaper is Stanley International Betting Limited (the former name of MRL). The company number at the bottom of the notepaper is that of MRL.

Alan Palin

46. The contract, with an effective date of 1 April 2019, identifies MRL as the employer. Continuous employment began on 26 February 2018. The copy of the contract provided to us is not signed.

Bernado Gomez

47. The offer letter dated February 2017 is on Stanley International Betting Limited notepaper. This company changed its name with effect from 2 January 2018 to MRL.

Francesca Davis

48. The offer letter dated 28 October 2019 is on MRL headed notepaper. The name and company number at the bottom of the notepaper is that of MRL.

49. Ms Davis provided a short witness statement. This said that her furlough documents were from Stanleybet group, but her redundancy was from Magellan Robotech. She wrote that she never worked on anything Magellan orientated during her time there. She wrote that her pay stubs were from Magellan.

Mark Lamen

50. The contract, with an effective date of 22 July 2011, identifies his employer as Stanley International Betting Limited. This company changed its name with effect from 2 January 2018 to MRL. The contract was signed by Mr Lamen on 13 October 2011.

Duncan Gkaidatzis

51. The contract, with an effective date of 15 February 2016, identifies his employer as Stanley International Betting Limited. This company changed its name with effect from 2 January 2018 to MRL. The contract was signed by Mr Gkaidatzis on 15 February 2016.

Gianfilippo Ingoglia

52. The contract, with an effective date of 5 December 2016, identifies his employer as Stanley International Betting Limited. This company changed its name with effect from 2 January 2018 to MRL. Mr Ingoglia signed the contract on 7 December 2016.

Zsolt Borsos

53. The contract, with an effective date of 12 February 2018, identifies his employer as MRL. Mr Borsos signed the contract on 12 February 2018.

John Cadman

54. The offer letter dated 20 December 2018 is on MRL notepaper with the correct company number.

55. The contract, with an effective date of 2 January 2019, identifies MRL as the employer. Mr Cadman signed the contract on 2 January 2019.

Callum Hough

56. The contract, with an effective date of 9 December 2019, identifies MRL as the employer. Mr Hough signed the contract on 13 January 2020.

Submissions

57. Mr Armstrong and Ms Kehoe both provided written skeleton arguments at the start of the hearing. They made oral closing submissions.

58. In summary, Ms Keogh's arguments on behalf of the respondents were that SIB became MRL; some of the employees of that company transferred to SSL or Stanleybet Holdings Ltd and others remained employed by MRL as it became. No new contracts were issued for those who remained with MRL. New contracts were issued for those who transferred to SSL. The contracts of employees who joined after the transfer were clear as to who they were employed by.

59. Ms Acquisto came to the UK from Gibraltar at the time of the transfer and when SSL was set up. It was intended that she should be employed by SSL. A contract was sent out but not returned. The pay review had the name of SSL at the top and bottom. The inclusion of the MRL company number was obviously a clerical error.

60. Ms Keogh made submissions about the documentation relating to the other claimants, arguing that they showed their employers were the companies identified by Mr Pounder in his witness statement.

61. Ms Keogh submitted that there was no authority in support of the claimant's proposition that two different employers should be considered one establishment where they were part of the same group.

62. Ms Keogh relied on *Akavan Erityisalojen Keskusliitto AEK ry v Fujitsu Siemens Computers Oy* [2009] ECR I-8163, [2010] ICR 444 as authority for the proposition that, where a parent company is involved in decisions which may lead to redundancies, the onus to actually hold collective redundancies resides in the subsidiary, not the group as a whole.

63. Each respondent proposed to dismiss less than 20 employees so section 188 did not apply to either. That was the end of the matter.

64. Mr Armstrong did not pursue all the arguments that he had set out in his written skeleton argument. In particular, he did not pursue an argument that the claimants had all become employees of the parent company.

65. The written skeleton argument for the claimants submitted that the respondents and Stanleybet Holdings Ltd should be regarded as the same socio-economic unit. Mr Armstrong argued that the company should be treated as one for the purposes of section 188 consultation.

66. Mr Armstrong's written skeleton argument had not addressed the argument which he put forward when discussing the issues at the start of the hearing i.e. that all the claimants were employed by MRL and none of them were employed by SSL.

67. In oral submissions, Mr Armstrong submitted that there were too many errors in the documentation to be clerical errors. He submitted that SSL was a ghost company only existing in Companies House. He submitted that all employees up to redundancy were still paid by SIB Ltd. He submitted that the registration number dictates what company it is.

68. Mr Armstrong said he assumed that the CEO was making the call on the numbers of redundancies in each company. Each company had the same directors. There was no evidence of the subsidiaries making decisions. He had asked for minutes of board meetings and none had been provided. Ms Acquisto's line manager had received a call to say who was going to stay and who was going to go. The parent company was assuming control.

69. Mr Armstrong submitted that all 35 employees should be aggregated. They were all working for the company they had always been working for. He submitted that they were all employed by MRL.

70. Mr Armstrong referred to a number of authorities but these did not relate to section 188 TULRCA and we did not find them to be of assistance in understanding or applying section 188.

The Law

71. Section 188(1) TULRCA provides:

> "Where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less the employer shall consult about the dismissals all the persons who are 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"

72. Section 295(1) TULRC defines "employer" in TULRC, in relation to an employee, as "the person by whom the employer is (or, where the employment has ceased, was) employed.

73. There are no provisions which link associated employers together for the purpose of constituting "an employer" for the purposes of section 188 consultation or which allow for the amalgamation of numbers of employees proposed to be dismissed by different employers, for the purposes of reaching the number of 20 proposed dismissals at one establishment which would trigger the obligation of collective consultation.

74. The obligation to comply with section 188 consultation falls on the employer who employees the relevant employees. This is the case even if the decision on

redundancies is taken by another company controlling the employer e.g. where the employer is part of a group of companies. In the *Akavan* case, the ECJ clarified that the obligation to consult will always lie with the subsidiary company that employs the workers and never with the parent company, irrespective of whether the decision in connection with collective redundancies was made by the parent or the subsidiary. It is the subsidiary company which must consult with its affected employees, even if its parent company has given it instructions to dismiss employees, and the subsidiary company which bears the consequences if collective consultation obligations are not complied with.

Conclusions

Who employed the claimants?

75. We must first consider who was the employer of each of the claimants.

76. We are able to reach a conclusion on the employer of all the claimants other than Ms Acquisto, on the basis of the contractual documentation alone. There was no contractual documentation produced by either party for Ms Acquisto, so we will deal with the issue of her employer separately.

77. On the basis of the contractual documentation, we conclude that the following claimants were employed by SSL at times relevant for redundancy consultation: Samuele Saccardi, Claudio Fiori, Elisa Chiamenti, Alberto Malfitano and Andrea Barlottini (see paragraphs 35 to 42). There are a few inconsistencies in the documentation, but we consider it more likely than not that these were clerical errors, albeit serious errors. The offer letter for Claudia Fiori had the wrong company number. The offer letter for Andrea Barolottini had the wrong company number and wrong company name at the bottom of the offer letter, although the name of SSL appeared at the top of the letter. Mr Barlottini signed a copy of a contract with SSL as the name of his employer, which supports our conclusion that the inconsistency in the offer letter was a clerical error.

78. Since Mr Armstrong submitted on behalf of the claimants that they were all employed by MRL, there is no dispute that the following claimants were employed by MRL at relevant times: Lee Wallace-Piercy, Alan Palin, Bernado Gomez, Francesca Davis, Mark Lamen, Duncan Gkaidatzis, Gianfilippo Ingoglia, Zsolt Borsos, John Cadman and Callum Hough. The contractual documentation supports MRL being their employer at relevant times (see paragraphs 43 to 54).

79. In relation to Ms Acquisto, the parties have not been able to produce a copy of a contract. However, the pay slips are in the name of SSL. The pay review is also in the name of SSL. We have found that the inclusion of the wrong company number at the bottom of the notepaper about the pay review was a clerical error and not one likely to have caused Ms Acquisto at the time to understand that she was employed by MRL rather than SSL (see paragraph 28). Her employment by SSL rather than MRL would be consistent with the way the Group's activities in the UK were divided between SSL, MRL and the holding company; Ms Acquisto was not employed as an IT specialist; she provided services across the Group. Ms Acquisto's witness

statement did not say she thought she was employed by MRL. Her oral evidence was inconsistent as to whether she was uncertain whether she was employed by SSL or believed she was employed by MRL. We did not consider that the references on Ms Acquisto's bank statements assisted in identifying her employer. We conclude that the evidence is more consistent with Ms Acquisto being employed by SSL than by MRL and conclude that she was employed by SSL at relevant times.

80. We conclude, for these reasons, that the claimants were employed by the companies identified in paragraphs 17 and 18 of Mr Pounder's witness statement.

Was the employer of the claimants proposing to dismiss 20 or more employees at "one establishment"?

81. We have concluded that 6 of the claimants were employed by SSL at relevant times and 10 were employed by MRL. The claimants were employed by the companies which the respondents had believed to be the case.

82. SSL identified 16 employees, including 6 of the claimants, as being potentially at risk of redundancy. MRL identified 19 employees, including 10 of the claimants, as being potentially at risk of redundancy.

83. In accordance with the provisions of section 188(1) TULRCA, the duty to consult representatives only arises if an employer proposes to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less.

84. SSL proposed to dismiss as redundant 16 of its employees at the Liverpool establishment within the relevant time period. Since the number it was proposing to dismiss was fewer than 20, the duty to consult representatives under section 188(1) TULRC did not arise. We conclude, therefore, that the claims brought by the claimants employed by SSL about breaches of the obligation to consult are not well founded.

85. MRL proposed to dismiss as redundant 19 of its employees at the Liverpool establishment within the relevant time period. Since the number it was proposing to dismiss was fewer than 20, the duty to consult representatives under section 188(1) TULRC did not arise. We conclude, therefore, that the claims brought by the claimants employed by MRL about breaches of the obligation to consult are not well founded.

86. All the claims for protective awards, therefore, fail and are dismissed.

Employment Judge Slater

Date: 5 May 2021

RESERVED JUDGMENT & REASONS
SENT TO THE PARTIES ON

11 May 2021

FOR THE TRIBUNAL OFFICE

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Schedule of claims

Case Number	Claimant Name
2413564/2020	Mrs Alessandra Acquisto
2413567/2020	Mr Andrea Barlottini
2413568/2020	Mrs Elisa Chiamenti
2413569/2020	Mr Alberto Malfitano
2413576/2020	Mrs Francesca Davis
2413579/2020	Mr Zsolt Borsos
2413577/2020	Mr Callum Hough
2413578/2020	Mr John Cadman
2413565/2020	Mr Samuele Saccardi
2413570/2020	Mr Lee Wallace-Piercy
2413574/2020	Mr Mark Lamen
2413575/2020	Mr Bernardo Medeiros Vieira Camara Gomes
2413566/2020	Mrs Claudia Fiori
2413571/2020	Mr Panagiotis Gkaidatzis
2413572/2020	Mr Gianfilippo Ingoglia
2413573/2020	Mr Alan Palin