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Implementing redundancies fairly

22 June 2023

Employment PowerHour Session 2

Outline

- What constitutes a redundancy situation?
- How to dismiss and select individuals fairly?
- Consultation ahead of redundancy
- Possibility of alternative employment
- Redundancy payments

What constitutes a redundancy situation?

What is a redundancy situation?

- Section 139(1) Employment Rights Act 1996
- Business closure
- Workplace closure
- Reduced requirement for employees
- 'Work of a particular kind'



How to dismiss fairly?

Redundancy as a fair reason



- Redundancy must be the real reason for dismissal
- Employer must act reasonably
- Fair process

Redundancy procedure

- Initial meeting
 - Town hall or individual?
- Scoring
- Invitation to consultation meeting
 - Inform of provisional selection
 - Right to be accompanied



Redundancy procedure

- Consultation meeting
- Follow up on employee's suggestions
- Second consultation meeting
- Written confirmation of the decision
- Appeal



How to select fairly?



Can you avoid compulsory redundancies?



- Consider ways to avoid redundancies
 1. Lay off and short-time working
 2. Asking for volunteers
 3. Early retirement

Selection pool

- Bumping - employee A is dismissed and replaced by employee B, when it is really employee B's job that has become redundant
- Mirab v Mentor Graphics (UK) Ltd [2018] EAT
 - whether or not employers are always required to give consideration to the option of bumping
 - no strict requirement on an employer to consider bumping proactively
 - best practice, employers should consider bumping as a possible option in all cases

Selection Criteria

- Clear and transparent
- Objective
- Extent of employer's discretion
- Length of assessment period

Selection Criteria

- Commonly used criteria
 - LIFO
 - Performance skills and knowledge
 - Flexibility
 - Disciplinary record
 - Attendance record
 - Health

Analysing Employee Selection

- Method of selection generally fair
- No detailed scrutiny in absence of evidence of underlying unfairness
- Tribunal should not substitute its own view
- *Semple Fraser LLP v Daly EAT 0045/09*
 - Criteria could not be faulted
 - Altered the score for mentoring
 - Two employees scored the same

Consultation ahead of redundancy

Types of consultation

- Individual consultation
- Collective consultation – when 20 or more employees to be dismissed in a 90 day period



Individual consultation



- Why the redundancy situation has arisen?
- Why they have been selected?
- Chance to make representations and challenge
- Opportunity to put forward suggestions
- Discuss possibility of alternative employment

Collective consultation

- The employer must consult “appropriate representatives” of the “affected employees”
 - Trade union representatives
 - Directly elected
 - Standing body
- What must be discussed?
- There must be a view to reaching agreement

Possibility of alternative employment

Alternative employment

- No legal obligation but it is more likely to be a fair dismissal if they consider
- Group companies should also consider roles within the wider group
- Trial period if employment differs



What is a reasonable search?



- Reasonable search that is documented
- Not always necessary to cover every company within the group
- Not obliged to create new roles
- Continue to search until dismissal takes place

What is alternative employment?



Status, job
contents



Pay and
benefits



Hours



Location

- Manageress to assistant ([Miller v Nettle Accessories Ltd \[1966\] ITR 328](#)).
- Loss of overtime ([O'Connor v Montrose Canned Foods Ltd \[1966\] ITR 171](#)).
- “Commuting is not generally regarded as a joy” [Laing v Thistle Hotels plc \[2003\] SLT 37](#)

Suitability and reasonableness

- An employee may refuse alternative employment
- However, they lose the right to the redundancy payment if it was “*suitable employment in relation to the employee*”
- Subjective and objective test
- Are they capable of carrying out the alternative work?



Redundancy payments

Redundancy payment



- Two or more years continuous service = Calculated on basis of age and length of service
- Maximum weeks pay is currently £643
- Possibility of contractual enhanced redundancy payment

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Thank You

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