

Redundancy – general principles

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Definition of redundancy

❖ Section 139 ERA 1996

“(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—

- (a) the fact that his employer has ceased or intends to cease—
 - (i) to carry on the business for the purposes of which the employee was employed by him, or
 - (ii) to carry on that business in the place where the employee was so employed, or
- (b) the fact that the requirements of that business—
 - (i) for employees to carry out work of a particular kind, or
 - (ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,have ceased or diminished or are expected to cease or diminish.

Definition of redundancy

⌘ *James Cook & Co. v Tipper* [1990] ICR 716

⌘ *Safeway Stores v Burrell* [1997] IRLR 200

⌘ 3-part process:

⌘ Establish dismissal

⌘ Establish that the requirements of the employers' business for employees to carry out work of a particular kind had ceased or diminished, or were expected to cease or diminish, and,

⌘ Establish that the dismissal was *caused* wholly or mainly by that cessation or diminution

⌘ *Murray v Foyle Meats Ltd* [1999] IRLR 562

⌘ – test is always one of causation

Collective redundancies

⚡ S 188 TULR(C)A 1992

Duty of employer to consult representatives.

(1) 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.

(1A) The consultation shall begin in good time and in any event—

- (a) where the employer is proposing to dismiss 100 or more employees as mentioned in subsection (1), at least 45 days, and
- (b) otherwise, at least 30 days,
before the first of the dismissals takes effect.

Collective redundancies

⚡ S 188 TULR(C)A 1992

- (2) The consultation shall include consultation about ways of—
- (a) avoiding the dismissals,
 - (b) reducing the numbers of employees to be dismissed, and
 - (c) mitigating the consequences of the dismissals

Section 188(4) – notification in writing to workforce as to (1) reasons for proposals (2) number and description of employees (3) method of selection (4) procedure for carrying out dismissals and (5) calculation of redundancy pay

Section 188(7) – Special circumstances whereby consultation not reasonably practicable to comply with above

Collective redundancies

- ⌘ *Junk v Kuhnel*, Case C-188/03 [2005] IRLR 310
 - ⌘ 'Proposing' vs. 'contemplating'
- ⌘ *Atavan Erityisdojen v Fujitsu Siemens Computers* [2009] IRLR 944
- ⌘ Penalty for failure to comply
 - ⌘ - Protective awards of up to 90 days' pay

Fairness of redundancy dismissal

❖ *Section 98 ERA*

- ❖ 98(2) redundancy a potentially fair reason for dismissal
- ❖ 98(1) also includes SOSR as a potentially fair reason which includes company reorganisation
- ❖ 98(4) fairness of decision to be assessed by reference to relevant circumstances and size and administrative resources of the employer

Warning and consultation

⚡ *Williams v Compair Maxam* [1982] IRLR 83

- ⚡ Were the employees, or union, warned as soon as possible and consulted as to the best means to be adopted and with the minimum hardship;
- ⚡ Was the union (if there was one) consulted about the best method of dealing with redundancy;
- ⚡ Were the selection criteria chosen objectively and applied fairly;
- ⚡ Did the employer properly investigate the possibility of transfer to other work.

Recent application

❖ *Gwynedd Council v Barratt* UKEAT/0206/18/VP, decision of 3 June 2020

- ❖ *Compair Maxam* principles not elevated to inflexible legal requirements by ET
- ❖ Unfair to require employees to interview “for their own jobs”
- ❖ No right of appeal substantively and procedurally unfair when viewing section 98(4) as a whole
- ❖ Non-consideration of Polkey