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REDUNDANCY - WHAT MUST HAPPEN BEFORE A DECISION IS MADE?

Redundancies are tough - and not only on the person being made redundant.

resources, counselling, career and financial advice, retraining and related financial support.

Whenever redundancies are argued about, the Court has two primary considerations:

Consultation means:

- (a) Whether the business decision to make the position redundant was a genuine one i.e. there is not some alternative motive; and
- (b) Whether the employer acted in a fair and open way in carrying out the redundancy, particularly looking at proper consultation prior to the decision being made and whether the employer's actions were in good faith.

- (a) It must be more than mere notification and must be allowed sufficient time. Consultation must be a reality and not a charade and is not a mere formality;
- (b) The proposal being consulted upon must not be acted upon until after the consultation process. Employees must know what is proposed before they can be expected to give their views;
- (c) Enough precise information must be provided to employee's and the employee's must be given enough time to give their view on that information;

Genuineness of Decision

An employer needs to be able to show that any decision to make a position redundant was a genuine business decision. A genuine redundancy is determined in relation to the position and not the employee. The Court has quite clearly held that a redundancy should not "mask another and different reason".

- (d) Genuine efforts must be made to accommodate the employees views. There should be a tendency to at least seek a consensus;
- (e) While entitled to have a working plan already in mind the employer must keep an open mind throughout the consultation process.

However, where an employer is motivated by both genuine business reasons and another improper motive (such as poor performance or incapability) the employer must prove that the genuine business reason was the dominant motive for dismissal. If so the Court has held that the dismissal is justified.

In addition to this the Employment Relations Act 2000 imposes a statutory duty to consult in good faith. This means that if an employer proposes to make a decision likely to have an adverse effect on an employee's employment, the employer must provide to that employee access to information, relevant to the continuation of the employee's employment, about the decision, and to give an opportunity to comment on the information to the employer before the decision is made.

As long as there is a genuine motive for the redundancy the Court will not look behind that genuine motive and impose its own business decision on the employer. The Court has clearly held that it is not for the Court or the Union or the worker to substitute their business judgment for the employer's.

As long as an employer can show that the decision to make a worker redundant is a genuine business decision, and has followed a process which is procedurally fair to that employee then the employers decision should not be overturned by a Court.

This means that as long as the employer has genuine grounds for the redundancy a Court will only look to procedural fairness surrounding the decision and the redundancy.

Procedural Fairness

A fair process will almost invariably involve consultation on a redundancy proposal and may include, subject to practicalities and

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