

Unfair redundancy – a timely reminder

Many employers are currently engaged in processes of redundancy consultation with their employees. Often those processes involve a need to reduce headcount in a team, or some other group of individuals undertaking comparable roles. In such cases employers often use a scoring matrix to determine those employees that will remain with the business and those that will be made redundant.

The case of *E-Zec Medical Transport Service Limited v Gregory* has recently considered the fairness of the consultation and selection process that led to the redundancy of Ms Gregory.

Ms Gregory was employed as an administrator and ambulance driver by E-Zec Medical Transport Service Limited (“E-Zec”). A downturn in work led to a decision by E-Zec that it should undertake a process of redundancy consultation. In that process Ms Gregory was one of 14 affected employees, 4 of whom were to be made redundant.

In order to determine which of the 14 affected employees would be made redundant E-Zec applied a scoring matrix that took into account criteria such as service, absence, sickness days, performance, commitment and team working. Unfortunately for Ms Gregory, she was identified as being one of the four employees that was to be made redundant. Ms Gregory subsequently claimed in the

Employment Tribunal that she had been unfairly dismissed due to a flawed selection and consultation process.

The Employment Tribunal agreed with Ms Gregory, as did the Employment Appeal Tribunal – she had been unfairly dismissed. In reaching that conclusion the Employment Tribunal and the Employment Appeal Tribunal identified a number of failings on the part of E-Zec, each of which is a useful reminder for any employer undertaking a redundancy process. In particular:

- Ms Gregory was simply told how she would be scored under the scoring criteria. No discussion took place with Ms Gregory as to the method of selection, the criteria to be adopted or the marking process. This was a risky strategy by E-Zec as a failure to try and agree scoring criteria prior to a scoring process risks a suggestion that there is a pre-determined outcome. Secondly it also risks a situation where an employee identifies one or more inappropriate or discriminatory criteria once the scoring has been completed. In such a circumstance the employer would have little option other than to re-score all affected employees with new criteria, thereby delaying the process;
- the scoring criteria used were subjective and incapable of any independent verification. The scoring manager was

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unable to link his scoring to company documents such as appraisals and had not spoken to other managers about his scores for verification purposes;

- the scoring manager had not made any notes as to the scores that he had awarded. This made it impossible for there to be a determination that the selection criteria used had been fairly applied. In such a situation it is very difficult for the scoring manager to give credible evidence at an Employment Tribunal as to why certain scores were awarded, especially when the hearing may be six months to a year from the date when the scoring process took place;
- Ms Gregory was invited to a series of consultation meetings, the last of which took place on 12th January 2007. That meeting was described as a consultation meeting, but at the end of the meeting Ms Gregory was handed a pre-prepared letter that stated that her employment was to be terminated. This did not sit well with the idea that the meeting was to be a consultation meeting, and gave the clear impression that the outcome was pre-determined;
- at the appeal hearing, the person determining the appeal did not speak to the manager that scored Ms Gregory to establish how the scoring was done nor whether there were any notes from the scorer to support the scoring. Despite this Ms Gregory's appeal was dismissed and the consultation process was described in the appeal outcome as fair and transparent.

This case highlights the general convention that whilst an Employment Tribunal will not undertake a "*microscopic analysis*" of the scoring process applied by an employer, it will focus on whether an employee has been treated fairly and a reasonable process followed.

If you have any questions about the issues raised in this case, or are considering undertaking a redundancy exercise, please contact Mark Minns.

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