



Legal Update

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Redundancy (1)

- An employer's scoring in a redundancy exercise should only be investigated in exceptional circumstances.
- The Tribunal should consider whether the selection was within the band of reasonable responses.
- Fair to employ 2 different managers for scoring purposes without a moderating system to ensure consistency.
- Nevertheless the Tribunal was entitled to scrutinise whether the employer had genuinely applied its mind to the selection pool.

Redundancy (2)

- However in a case where a pool comprised a senior and junior employee, selection should have been made rather than assuming the senior role was redundant.
- A group of actuaries should have been pooled for redundancy selection rather than the pool being limited to the individual whose work had reduced through no fault of her own.
- An employer is not limited to objective criteria in selecting redundant staff for redeployment.

Can Indirect Discrimination be Justified by Cost?

- Tribunals can consider the cost of adjustments compared to other business costs and overall budget in disability cases.
- In **Woodcock** the discriminatory effect of the termination of employment before age 50 was justified as a pension benefit would constitute a “windfall”.

Age Discrimination

- In order to justify indirect discrimination an employer must have a legitimate aim.
- Restricting promotion to those holding a degree constituted indirect discrimination.
- The case has been remitted to consider whether the requirement of a degree is a proportionate means of achieving the aim of ensuring promotion of high calibre staff.
- In order to justify direct discrimination there must be a social policy objective.
- Social policy objectives of inter generational fairness and dignity were legitimate.
- Compulsory retirement may be a proportionate means of achieving those aims.
- Whether 65 is proportionate is still to be decided.

Working Time Regulations

Statutory Annual Leave

- Workers on sick leave continue to accrue AL.
- If a worker is ill during AL he is entitled to take it later.
- Carry forward will not be indefinite but uncertainty remains over when it will be extinguished.
- Whether a worker has to request AL to benefit remains unsettled.
- The right to carry-forward leave only relates to the first 4 weeks' entitlement.

TUPE – Change of Service Provision

- The key question is whether the activity remains fundamentally or essentially the same.
- In considering whether activities are essentially the same, minor differences may be disregarded.
- Provision of services following transfer may be so fragmented there is no change in service provision.

TUPE (2)

- In considering activities an “holistic” assessment is required.
- In considering the assignment of a group of employees it is necessary for them to be organised by reference to the client’s requirements.
- In considering the ETO defence, a change in the workforce did not cover the substitution of employees by franchised companies.

TUPE (3)

- Contractual variation was not unfair where the intention was to address a presumed error and not connected to the transfer.
- A contractor dismissed and re-engaged transferring staff in order to apply its performance related pay system. Held the aim was not to harmonise contracts but to improve productivity.

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