Fair Selection for Redundancy - 2

This issue was addressed in ADJ-00018415. The Adjudication Officer quoted the case of Williams –v- Comp Air 1982 1 ICR156 where Browne Wilkinson J in considering the issue of fair selection identified the following generally accepted principles governing how reasonable employers will typically act.

The employee will seek to give as much warning as possible of impending redundancies so as to enable the Union and employees who may be affected to take early steps to inform themselves of the relevant facts, consider possible alternative solutions and, if necessary, find alternative employment in the undertaking or elsewhere.

The employer will consult the Union as to the best means by which the desired management result can be achieved fairly and with as little hardship to the employees as possible. In particular, the employer will seek to agree with the Unions on criteria to be applied in selecting the employees to be made redundant. Where a selection has been made, the employer will consider with the Union whether the selection has been made in accordance with those criteria.

Whether or not an agreement as to the criteria to be adopted has been agreed with the Union, the employer will seek to establish criteria for selection which so far as possible do not depend solely upon the opinion of the person making the selection but can be objectively checked against such things as attendance records, efficiency at the job, experience, or length of service.

The employer will seek to ensure that the selection is made fairly and in accordance with these criteria and will consider any representation the Union may make as to such selection.

The employer will seek to see whether instead of dismissing the employee he could afford him alternative employment.

In Boucher –v- Irish Productivity Centre 1994 ELR205 this was a case which covered the issue of unfair selection. The selection had been carried out without any consultation or interviews. The Employment Appeals Tribunal emphasised that those in the group likely to be dismissed should be made aware that such assessment is being made

and should be given an opportunity to give their views which should be considered.

In Mulligan –v- J2 Global (Ireland) Limited UD-993-2009 in respect of redundancy the Tribunal stated;

"In case of redundancy, best practice is to carry out a genuine consultation process prior to reaching a decision as to redundancy. While in some cases there may be no viable alternative to the making of one or more jobs redundant, whatever consultation process is carried out, the employer who fails to carry out a consultation process risks being found in breach of the Unfair Dismissal Acts as such a lack of procedure may lead to the conclusion that an Unfair selection for redundancy had taken place!".

In JVC Europe –v- Banasi 2011 IEHC279 Mr. Justice Charleton stated;

"*It is made abundantly clear by the Legislation that redundancy, while it is a dismissal, is not unfair. A dismissal however can be distinguished as redundancy that is not lawful. Upon dismissal an employee can simply say that the employee was not dismissed for a reason specific to that person but that instead his or her services were no longer required, pointing to apparently genuine reasons for dispensing with the services of the employee. In all cases of dismissal, whether by reason of redundancy or substantial grounds justifying dismissal, the burden of proof rests of the employer to demonstrate that the termination of the employment came within a lawful reason*".

Another case that was quoted is that also of St. Leger –v- Frontline Distributors Ireland Limited 1995 ELR160 where Dermot McCarthy SC stated;

"*Impersonality runs throughout the five definitions of the Act. Redundancy impacts on the job and only as a consequence of the redundancy does the person involved lose his job. It is worthy to note that the EC Directive on collective redundancies uses a shorter and simpler definition "one or more reasons not related to the individual worker concerned.*

Change also runs through all five definitions. This means change in the workplace. The most dramatic change of all is a complete shutdown. Changes may also mean a reduction in needs for

employees, or a reduction in numbers. Definition (d) and (e) involve change in the way of work is done or some other form of change in the nature of the job. Under these two definitions change in the job just means qualitative change. Definition (e) must involve, partly at least work of a different kind and that is the only meaning we can give to the words "other work". More or less work of the same kind does not mean "other work" and is only quantative change".

It is interesting that the case in JVC Europe Mr. Justice Charleton also remarked;

"*It may be prudent, as a mark of a genuine redundancy, that alternatives to letting an employee go, should be examined*".

This is a case where the complaint issued on 4th December 2018. The decision issued on 28th April 2020 with the case having being heard on 7th June 2019.

We simply mention this as this is a case under redundancy which has arisen before we are likely to have the avalanche of redundancies arising. It issued at a time when we had a considerable amount of full employment in this country. Therefore this decision is a useful decision as it was written at a different time but it is setting out the law as it is now going to be applied in these changed circumstances.