

## **Selection for Redundancy - 8**

In the case of Student Union Commercial Services Limited and Alan Traynor UDD1726 the Court dealt with a situation where the Court held that there was a general redundancy situation which existed. One might think that this therefore was the end of the Unfair Dismissal case. Far from it. The Court in this case looked at the case of Mulcahy -v- Kelly 1993 E.L.R. 35 where the EAT held that it was well established that there is an obligation on an employer to look for an alternative to redundancy.

The Labour Court pointed out that this duty may involve locating alternative work within the organisation even if this involves dismissing another employee with shorter service. The Court pointed out in Thomas and Beets Manufacturing Limited -v- Harding 1980 I.R.L.R 225 the English EAT found the complainants dismissal unfair because she could have found work as a packer even though this would have meant dismissing a recently employed packer. The Labour Court pointed out that where there is no agreed procedure in relation to selection for redundancy then the employer must act fairly and reasonably. The Court referred to Section 6 (7) of the Act as amended and set that out in detail.

In this case the Court was satisfied that the respondent employer did follow a consultation process with the complainant. The Court noted that the complainant has almost 12 years' service. The Court noted that the company had a number of business units which had fluctuating numbers of staff employed. The Court pointed out that it was presented with no information to demonstrate that the respondent carried out an exercise to consider alternative options/suggestions. The Court went on to say that the Court accept that had such an exercise been carried out it may not have identified any alternative positions suitable to the complainant. However, the Court pointed out importantly that it seemed still that no such exercise was engaged and on that basis the Court found that the approach adopted by the respondent was somewhat arbitrary and therefore the dismissal of the employee pursuant to Section 6 (7) was unfair.

The Court awarded the sum of €12,000 on top of the existing redundancy payment which had been made. This is an extremely important decision of the Labour Court. It highlights the importance of employers having a procedure in place for selection for redundancy.

The case highlights the importance of considering alternative employment within the organisation. The decision highlights the importance of considering any alternative options or suggestions that are put forward.

The fact that an employer might believe that such process may not change the ultimate decision does not impact on the obligation to do so and failure to do so may well result in an Unfair Dismissal claim being upheld against an employer.

It is very useful that the Labour Court have taken the time to set out in some detail the approach which an employer should adopt.