

Selection for Redundancy

This issue arose in the case TUS Community Supervisor and a Local Development Company. Ref ADJ-00020033.

In this case the Adjudication Officer helpfully set out the relevant legislation being set out in Section 1, 6(1), 6(3), 6(4)(c), 6(7) of the Unfair Dismissal Acts. The other relevant section is Section 7(2) of the Redundancy Payment Acts, 1967-2014.

The Adjudication Officer set out the legislation in detail. When it came then to the issue of the selection of redundancy where it is accepted that the burden of proof is always on the employer the case of Boucher Irish Productivity Centre R92/1992 is relevant. In that case the EAT stated that the employer had to 'to establish that he acted fairly in the selection of each individual employee for redundancy and that where assessment are clearly involved and used as a means for selection that reasonable criteria are applied to all the employees concerned and that any selection for redundancy of the individual employee in the context of such criteria is fairly made'.

The Adjudication Officer pointed out that generally selection criteria should not be based on subjective assessments of the employee. This is absolutely correct in our view. The employer must be able to establish as the Adjudication Officer set out that an employee was fairly selected for redundancy based on independent, objective and verifiable criteria. In essence what is required of the employer in this respect is to be able to objectively justified why a particular employee was selected for redundancy as opposed to another employee. Specifically the employer must be able to demonstrate that a particular employee had been compared to others who might have been made redundant. Where redundancy arises and no agreed procedure or custom is in place the reasonableness of the selection criteria is usually focused on and tends to be assessed by the objective standards of the way in which a reasonable employer in those circumstances in that line of business at that time would have behaved.

The Adjudication Officer pointed out the case of Bunyan -v- United Dominion Trust (Ireland) Limited 1982 ILRM404 where the EAT endorsed and applied the following view quoted from NC Watling Co Ltd -v- Richardson 1978 IRLR225 where it was stated:

“the fairness or unfairness of dismissal is to be judged by the objective standard of the way in which a reasonable employer in those circumstances in that line of business, would have behaved. The Tribunal therefore does not decide the question whether, on the evidence before it, the employee should be dismissed. The decision to be dismissed has been taken, and our function is to test such decision against what we consider the reasonable employer would have done and/or concluded “

In that case the employee won the case because it was able to be shown that the employee had been subjected to certain disciplinary matters. The case highlights the importance of the employer applying fair selection procedures.