

## **Unfair Dismissal – Unfair selection for Redundancy**

Where an employee is unfairly selected for Redundancy this can result in an Unfair Dismissal case. This occurred in a case ADJ2619 where an Adjudication Officer awarded €12,000 to the employee holding that the dismissal in such circumstances was an unfair dismissal. The employee had an economic loss in 2016 of €6162 between what he would have earned in his previous employment and after the dismissal. Compensation of €12,700 was awarded. This effectively is 2 years loss of earnings. Such decisions are important to have a significant impact on employers and it is important that employers apply fair procedures.

In this case the employee relied on cases of Mackey –v- Resource Support and Services Limited UD56/2009 and Fennell –v- Resort Facility Support Limited UD57/2009 where the employee maintained that the EAT had held that in both cases there were genuine redundancies but the employer did not adopt fair procedures in affecting the redundancies.

The employee in this case also relied on the cases of Gillian Free –v- Oxigen Environmental UD206/2011 where the EAT upheld that an employer must act fairly and reasonably when selecting one employee over another for redundancy.

The Adjudication Officer held that the employer;

1. Failed to consult or engage with the claimants before announcing the decision to restructure
2. Failed to properly consult with the claimants on the procedures that it adopted
3. No selection matrix was discussed with the claimants
4. Did not afford the claimants a reasonable opportunity to consider these procedures
5. Did not afford the claimants an opportunity to make proposals that might avoid redundancy

On that basis the Adjudication Officer held that the complainant was unfairly dismissed. This case is an important reminder for employers that it is vitally important that employers adopt fair procedures in the selection process. The procedures should be open. It should be transparent. There should be discussions with the employees

involved. The employees should have an opportunity to put forward alternatives to redundancy or the selection process.

The fact that these things are done may not change who may ultimately be chosen for redundancy but the issue is whether the individuals were fairly selected. Where an employer fails to apply fair procedures then they run the risk of potentially having not simply a redundancy claim but in fact an unfair dismissal claim which can be far more expensive.

Unfortunately in many cases employers fail to obtain legal advice from specialist employment Solicitors before embarking upon redundancy processes.

The cost of doing so is far less than the level of award which can be awarded which was awarded in this case. This case is one of those cases which should be read by employment law Solicitors, HR/IR Professional and by employers. It is one of those useful decisions which issue from the WRC.