

Unfair Dismissal and Redundancy

This issue arose in the case of a Senior HR Manager and a Global Management Company. ADJ-20023549.

The Adjudication Officer pointed out the case of JVC Europe Limited – v- Panisi 2011, IEHC 279 where Charleton J stated;

“In all cases of dismissal whether by reason of Redundancy or for substantial grounds justifying dismissal, the burden of proof rests on the employer to demonstrate that the termination of employment came within a lawful reason. In cases of misconduct, a fair procedure must be followed whereby an employee is given an entitlement to explain what otherwise might amount to a finding of real seriousness against his or her character”.

In an Unfair Dismissal claim, where the answer is asserted to be redundancy, the employer bears the burden of establishing redundancy and of showing which kind of redundancy is apposite. Without that requirement vagueness would replace the precision necessary to ensure that upholding of employee rights. Redundancy is not personal. Instead, it must result from, as Section 7(2) of the Redundancy Payment Acts 1967, as amended, provides;

“Reason not related to the employee concerned.”

“Redundancy cannot therefore be used as a cloak for the weeding out of those employees who are regarded as less competent than others or who appear to have health or age related issues. If that is the reason for letting the employee go, then it is not a redundancy, but a dismissal”.

The Adjudication Officer pointed out that Mr. Justice Charleton recited two specific legal requirements in effecting a legitimate redundancy both of which are directly relevant in the particular cases. The first is Section 7(2) of the Act of 1967 where Section 5 (2) requires that “(2) for the purposes of subsection (1), an employee who is dismissed shall be taken to be dismissed by reason of redundancy if for one or more reasons not related to the employee concerned the dismissal is attributable wholly or mainly... five listed grounds. The Adjudication Officer pointed out that this highlights the essential requirement of impersonality in affecting a fair dismissal on grounds of redundancy noting the cases of St. Ledger –v- Front Line

Distributors Ireland Limited 1995 E.L.R.160 at pages 161-162 where the EAT stated;

“Impersonality runs throughout the five definitions of the Act”.

In this case Mr. Justice Charleton remarked that;

“It may be prudent and a mark of genuine redundancy that alternatives to letting an employee go should be examined” and that a fair selection procedure may indicate an honest approach to redundancy by an employer”.

This case is useful in setting out the tests in relation to redundancy.