

Unfair Dismissal and Redundancy

The issue of an Unfair Dismissal case in a situation involving redundancy arose in a case of Trinity College Dublin and Ahmad UDD2030.

In this case the dismissal of the complainant was not in dispute. The court pointed out that consequently, having regard to the Act in Section 6 (1) the burden of establishing that the dismissal was fair rests on the Respondent.

The Court pointed out that the Respondent had submitted to the court that the complainant was dismissed by reason of redundancy. The court pointed out in the event that the Respondent could establish that a redundancy within the meaning of the Act had taken place the respondent would be entitled to rely on the provisions of Sections 6(4) (c) of the Act. The Court also quoted the provisions of Section 7(2) of the Redundancy Payment Act 1967.

In the discussion and conclusion, the Court pointed out

"The Acts deem a dismissal to be unfair unless the Respondent can demonstrate that it would be neither substantially nor procedurally unfair. Where redundancy is put forward by the Respondent as the reason for termination of the employment it is necessary for the Respondent to establish that the purported redundancy not only meets the definition of that term but that the Complainant was fairly dismissed by virtue of fair selection for redundancy. In that case the argument by the employee was that the procedures afforded to him were unfair."

The Court referred to the case of Gillian Free -v- Oxigen Environmental UD206/2011 where the Employment Appeals Tribunal noted that

"When an employer is making an employee redundant while retaining other employees, this selection criteria being used should be objectively applied in a fair manner. While there are no hard and fast rules as to what constitutes the criteria to be adopted nevertheless the criteria adopted will come under close scrutiny if an employee claims that he/she was unfairly selected for redundancy... Where there is no grievance procedures in relation to selection for redundancy... Then the employer must act fairly and reasonably"

The Court pointed out that

"The Court accepts, on balance, that the requirements of the university for the work the complainant was carrying out had ceased due to lack of funding for that role and that therefore was a cause of termination of the complainant's employment. On that basis the Courts find that there was a redundancy situation. However, the Court notes that he was no longer on a specified purpose contract and was now on a contract of indefinite duration. It is clear

to the Court that sufficient efforts were not made to seek alternative roles for him, the Court therefore, cannot accept that his dismissal by virtue of fair selection for redundancy had been discharged by the respondent and consequently finds that the complainant was unfairly dismissed."

This decision of the Labour Court is very clear and very precise. Even in a redundancy situation it is necessary for an employer to apply fair procedures. That is not only in relation to the selection process but also in relation to the dismissal itself. At a minimum it would be our view that the code of practice on grievance and disciplinary procedures must be applied to the employee. If the employer has a disciplinary process which is more extensive than in those circumstances that process effectively has to be applied. It might be said that a person being made redundant has done nothing wrong and why would the disciplinary process be applied. Effectively, it is the disciplinary process applying on the basis of no wrongdoing but just that the role is being made redundant. Therefore, that would give the employee the right to advance notice, a right to be represented, a right to be notified of same, a right effectively to be given an at-risk letter and a right of appeal.

It is likely there are going to be a significant number of cases coming forward where an individual has been made redundant but will also be claiming unfair dismissal subsequently because of the fact that fair procedures were not applied.

In this case compensation on top of the statutory redundancy was awarded.

***Before acting or refraining from acting on anything in this guide, legal advice should be sought from a solicitor.**

****In contentious cases, a solicitor may not charge fees or expenses as a portion or percentage of any award of settlement.**