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Dismissing employee due to client pressure: employer to consider injustice to employee

(Greenwood v Whiteghyll Plastics Ltd)

Whiteghyll Plastics is a shop fitting business with clients including Morrisons supermarkets. Greenwood who was employed by Whiteghyll carried out shop fittings at Morrisons. Whiteghyll receive 3 complaints from Morrisons and was asked to remove Greenwood from Morrisons' team. Whiteghyll considered whether there was alternative work for Greenwood but found there was none. Whiteghyll dismissed Greenwood and Greenwood claimed unfair dismissal.

The Tribunal at first instance found that there was a fair reason for dismissal, namely some other substantial reason and that Whiteghyll had acted fairly in dismissing in the circumstances. The Tribunal accepted that Whiteghyll was given little choice in the matter.

Greenwood appealed to the EAT. The EAT accepted that there was a fair reason for dismissal, namely some other substantial reason as a result of pressure from an important client, but that the Tribunal had failed to consider the nature and extent of the injustice caused to the employee as a result of the hardship. This requires consideration of matters such as length of service, performance record and how hard it will be for the employee to find another job. An employer will be expected to go the extra mile for an employee with a long service record. After considering the issue of injustice, the employer must consider how to alleviate the injustice. The employer would be wise to speak to the customer to put forward the employee's version of events, to try and resolve the situation without removing the employee, for example by performance managing or retraining the employee. Alternative work should be considered, perhaps even considering swapping the employee with one working for another customer.

The EAT has sent the case back to a different tribunal to re-hear the injustice point.

Age Discrimination – Manager selected for redundancy because of his age *(Court v Dennis Publishing Ltd)*

When selecting employees for redundancy, employers must be careful to ensure that the employee's age must not be a deciding factor.

In this case the Employment Tribunal found that a publishing company directly discriminated against a 55 year old senior employee on the grounds of his age when it selected him for redundancy. A number of factors led the Tribunal to draw an inference of discrimination, including a general culture within the company that younger, cheaper employees were preferable to older more expensive employees. The Company had failed to consider any other employees for redundancy, who all happened to be at least 20 years younger than the Claimant.

It is rare for there to be evidence of direct discrimination and the Tribunal therefore may draw an inference of discrimination. The mere fact of having a younger workforce will not in itself lead to such an inference, but in this case the employer was unable to offer any explanation for the selection.

It would be open to the employer in any event to plead the justification defence by showing that the less favorable treatment on the grounds of age was a proportionate means of achieving a legitimate aim.

Redundancy – Requirement for Collective Consultation *(UK Coal Mining Ltd v NUM)*

The EAT has handed down a very important decision dealing with collective consultation obligations in redundancy cases. This landmark case concerned the 2005 closure of the Ellington colliery in Northumberland, with the loss of 330 jobs. The union took the company to court because it failed to carry out the required 90 day consultation period, before closing the pit on safety grounds. The EAT ruled that the failure to consult on the reason behind the decision was unlawful and damages are likely to exceed £2 million.

Overturning previously binding authority, the EAT has held that there IS a duty on employers to consult over the reason for making redundancies in the first place (in this case the closure of a mine). This has previously been an area in which the Tribunal would not interfere.

Employers must now involve unions and staff in the decision making process when they plan to close businesses and make multiple redundancies. In the past employers have not needed to consult with unions about the reason for closing the workplace. Employers have instead concentrated on discussing ways to reduce the impact of the closure. The judgment means that unions could demand relevant business information to challenge the rationale for closures.

If you have any questions about these or other employment issues please call Heather Cowley on 01582 731161.

The information given in this email update was, at the time of publication, believed to be a correct statement of the law. However, readers should seek specific legal advice on matters arising, and no responsibility can be accepted for action taken solely in reliance upon such information.