Redundancy: No need for reduction in number of employees

Packman t/a Packman Lucas Associates v Fauchon UKEAT/0017/12

Must there be a reduction in the number of employees required in order for a dismissal to be by reason of redundancy?

In this case the EAT upheld the decision of an Employment Tribunal that it was not necessary for there to be a reduction in headcount for the statutory definition of “redundancy” to apply. The EAT stated that it is necessary to analyse the situation in two key respects: the employees and the work. The fact that the number of employees does not change does not necessarily mean there is no redundancy situation, as there may still be a relevant reduction in the work required to be carried out by employees.

Facts

Due to a downturn in business and the introduction of accountancy software, Packman identified a reduced need for book keeping work to be carried out manually. Ms Fauchon was employed by Packman to do such work and Packman asked her to accept a significant reduction in her hours. Mr Fauchon refused and her employment was terminated by Packman.

There was a dispute as to the reason for dismissal and Ms Fauchon brought proceedings in the Employment Tribunal claiming a statutory redundancy payment. Packman argued that Ms Fauchon had not been dismissed by reason of redundancy because there was no reduction in the number of employees required. The EAT held that Ms Fauchon had been dismissed by reason of redundancy for refusing to work reduced hours, despite the fact that Packman still required her to do her job.

Implications

There is significant scope for uncertainty regarding the application of the statutory definition of “redundancy” under s.139(1)(b) (which deals with the reduction or cessation of particular work) to dismissals resulting from reorganisations and changes in work levels.

An earlier EAT decision in the case of Alyward had suggested that there had to be a reduction in the number of employees performing work of a particular kind in order for a resulting dismissal to amount to a s.139(1)(b) redundancy. This new decision provides helpful clarification that this will not always be the case.

Employers should undertake a broad analysis of the factual situation underpinning a reorganisation or change in work levels/hours when considering whether resulting dismissals will be by reason of redundancy. A redundancy situation may arise where there is a reduction in working hours but no reduction in overall headcount. Equally, it may arise where the headcount is reduced but the amount of working hours remains constant. The essential question remains whether there is a reduction in the requirement for “employees to carry out work of a particular kind”.

The EAT expressed its approval of the use of a full time equivalent (“FTE”) approach to assessing the hours of work and number of employees required. While the approach will not be appropriate in all cases, it can be a helpful way of identifying whether the overall requirement for employees carrying out work of particular kind has reduced.

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