Procedural Requirements of a Fair Redundancy Process

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1. Introduction

The case of Donal Finnegan v Liffeyfield Limited t/a Bonnington Hotel (ADJ00055992) examines the circumstances under which a dismissal, on foot of redundancy, will be deemed to have been carried out in accordance with the procedural requirements of a fair redundancy process.

Mr Finnegan (the "Complainant") brought a complaint under Section 8 of the Unfair Dismissal Act, 1997 against Liffeyfield Limited (the "Respondent") to the Workplace Relations Commission ("WRC"), alleging that his dismissal was unfair. The Complainant cited a failure to follow fair procedures in effecting the redundancy.

2. Legislation and Case Law

Redundancy is defined by Section 7(2) of the Redundancy Payments Act 1967 (as amended) as follows:

"(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 to-

(a) the fact that his employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed by him, or has ceased or intends to cease, to carry on that business in the place where the employee was so employed, or

(b) the fact that the requirements of that business for employees to carry out work of a particular kind in the place where he was so employed have ceased or diminished or are expected to cease or diminish, or

(c) the fact that his employer has decided to carry on the business with fewer or no employees, whether by requiring the work for which the employee had been employed (or had been doing before his dismissal) to be done by other employees or otherwise, or

(d) the fact that his employer has decided that the work for which the employee had been employed (or had been doing before his dismissal) should henceforward be done in a different manner for which the employee is not sufficiently qualified or trained, or

(e) the fact that his employer has decided that the work for which the employee had been employed (or had been doing before his dismissal) should henceforward be done by a person who is also capable of doing other work for which the employee is not sufficiently qualified or trained,…"

The applicable passages of Section 6 of the Unfair Dismissals Act 1977 (as amended) (hereinafter referred to as "the 1977 Act") provide as follows:

(1) Subject to the provisions of this section, the dismissal of an employee shall be deemed, for the purposes of this Act, to be an unfair dismissal unless, having regard to all the circumstances, there were substantial grounds justifying the dismissal.

(6) In determining for the purposes of this Act whether the dismissal of an employee was an unfair dismissal or not, it shall be for the employer to show that the dismissal resulted wholly or mainly from one or more of the matters specified in subsection (4) of this section or that there were other substantial grounds justifying the dismissal.

(4) Without prejudice to the generality of subsection (1) of this section, the dismissal of an employee shall be deemed, for the purposes of this Act, not to be an unfair dismissal, if it results wholly or mainly from one or more of the following:

...

(c) the redundancy of the employee,

and…

(7) Without prejudice to the generality of subsection (1) of this section, in determining if a dismissal is an unfair dismissal, regard may be had, if the adjudication officer or the Labour Court, as the case may be, considers it appropriate to do so-

(a) to the reasonableness or otherwise of the conduct (whether by act or omission) of the employer in relation to the dismissal,"

…

Subject to the generality of Section 6(1), Section 6(4)(c) of the 1977 Act provides that the dismissal of an employee is deemed not to be unfair if it results wholly or mainly from redundancy. As observed by Charlton J. in the leading case of JVC Europe Ltd v. Ponisi [2012] E.L.R. 70:

"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 the upholding of employee rights."

The legislation as interpreted by caselaw including that cited above requires the employer to

(1) establish that a genuine redundancy situation existed and if so, that the dismissal resulted wholly or mainly from redundancy and

(2) conduct itself reasonably throughout including adherence to fair procedures. This includes a fair selection process and the taking of reasonable steps to identify alternative employment. Invariably, these requirements will be inextricably linked. Where an employer has no agreed redundancy selection policy, it is well-established in caselaw that the employer must act fairly and reasonably.

Where an employee has been dismissed and the dismissal is found to be an unfair dismissal the employee shall be entitled to redress pursuant to Section 7 of the 1977 Act. Such redress might include re-instatement, re-engagement or compensation for any financial loss attributable to the dismissal not exceeding 104 weeks remuneration. The acts, omissions and conduct of both parties will be considered when calculating the extent of the financial loss and there is an onus on a Complainant to adopt measures to mitigate the financial/remunerative loss which includes actual loss as well as estimated prospective loss.

3. Decision

Ultimately, the adjudication officer decided that the dismissal of the Complainant was unfair. Critically, the Respondent failed to produce evidence supporting the claim that the redundancy was necessitated by financial circumstances. The adjudication officer deemed the redundancy a "sham", executed in a manner described as "ruthless and dishonest". This conclusion was bolstered by the fact that the Respondent advertised similar roles shortly after the Complainant's dismissal.

With respect to the shortcomings, the adjudication officer noted that the Respondent did not:

- Engage in any meaningful consultation with the Complainant prior to the dismissal;
- Apply a fair and objective selection process;
- Consider suitable alternative employment;
- Provide clear, timely and adequate communication regarding the redundancy; and/or
- Demonstrate that the redundancy was genuine in that it failed to provide sufficient evidence; that the role in question was no longer required.

With respect to the particular shortcomings, in the present case, the adjudication officer noted:

- That the Complainant was not given adequate notice of a "redundancy meeting" held on 04 August 2024;
- That the Complainant was never told the purpose of the meeting in advance;
- That the Complainant was never advised of his rights to be accompanied or represented at the meeting;
- That the Complainant was not placed on notice that the Respondent was considering redundancies;
- That the Complainant was not informed that he was at risk of redundancy;
- That there was no consultation process;
- That there was no redundancy policy or clear process applied by the Respondent;
- That no consideration appears to have been given to possible alternatives to redundancy;
- That the Complainant was not afforded an opportunity to make representations or proposals to avoid redundancy; and/or
- That the Complainant was not provided with any opportunity to appeal the decision to terminate his employment.

Considering all of the foregoing, the adjudication officer awarded the Complainant compensation of €26,000, which took into account and allows for the payment of €8,002, already made by the Respondent.

4. Further information

This article was prepared by Barry Crushell for informational purposes only. For further advice, please email contact@crushell.ie or contact the offices of Crushell & Co Solicitors.

5. About Crushell & Co

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