Redundancy does not require a reduction in headcount

In Packman T/A Packman Lucas Associates v Fauchon, the Employment Appeal Tribunal (EAT) provided some clarity in the statutory definition of redundancy. The EAT decided to depart from the decision in Aylward and Ors v Glamorgan Holiday Home Ltd (EAT/0167/02) (Aylward), and found that a redundancy situation can arise in the situation where the amount of work to be done by the same number of employees is reduced. This means that a redundancy situation can arise where there is no reduction in the number of employees.

The Claimant was employed as a book-keeper. Due to a decline in business and the introduction of a new piece of software, the Claimant’s level of work diminished. As a result the Respondent asked that the Claimant to reduce her hours. The Claimant refused to do so and was consequently dismissed.

The Employment Tribunal found that as the Claimant had suffered a diminished level of work, the reason for dismissal was redundancy. In reaching their conclusions, the Employment Tribunal considered the judgement in Aylward, which said that for employee to be dismissed by reason of redundancy a reduction in headcount was required. However, the Employment Tribunal “shared and endorsed” the views set out in Harvey on Industrial Relations and Employment Law (Paras E908-912) (Harvey) casting doubt over the judgement. The Employment Tribunal decided to depart from this decision and found that although there was no reduction in head count, the dismissal was by reason of redundancy.

The EAT dismissed the appeal and agreed with the “bold” decision of the Employment Tribunal to depart from the principle in Aylward, that a reduction in headcount was not a necessary requirement of a redundancy.

The EAT considered the wording of the statute which, for a redundancy situation to exist, requires “the requirements of the business…..for employees to carry out work of a particular kind…[to] have ceased or diminished”. The EAT held that it was important to give value to each word of the section in the statute, stating that “the statute looks at two variables. The employees, and the work”. The EAT found that whilst there was a reference to work of a ‘particular kind’, the section also required work to have ‘ceased or diminished’. The EAT concluded that if work of a particular kind had diminished, in the sense that less work of that sort needed to be done, then there would be a redundancy situation.
The EAT discussed the example considered in Harvey where two employees each have their workload reduced by 50%. Although there is no reduction in numbers of staff, when looking at this example on a full-time equivalent basis, there is clearly a reduction from two employees to one. The EAT held that this approach was consistent with the industrial approach and was what the draftsman had “plainly anticipated” its interpretation to be.

**Advice for businesses:**

The decision has provided clarity on the requirements of a redundancy situation. The judgement does not mean a reduction in hours will always result in a redundancy situation, but does confirm that there does not have to be a reduction in the number of staff for a redundancy situation to arise.

Employers should be aware that just because the number of employees remain the same, this does not mean that a redundancy situation has not arisen. Employers need to be alive to the fact that a redundancy situation may arise where there is a reduction in the work to be done by the same number of employees. Unfortunately, the EAT have failed to provide guidance on what level of reduction in hours will trigger a redundancy situation and therefore employers should bare this in mind.

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