

The English courts have reinforced the duty on employers to be more open towards their staff

Collective Consultation - reality or fiction?

As we enter a new year with reflections on the past and predictions for the future, one thing is certain - change. Whether in an expanding economy or one restricted by a global credit crunch, whether brought about by "economic slowdown" or "efficiency savings", change is inevitable. Such change will almost always involve situations where larger scale redundancies are inevitable.

For the employer proposing collective redundancies there is a duty to consult with any appropriate trade union or other employee representatives in good time, and with a view to reaching agreement, about ways of avoiding the dismissals, reducing the numbers of employees to be dismissed, and mitigating the consequences of any dismissals.

In the past, consultation obligations may have been paid lip service, restricted to the bare minimum, or even ignored. Indeed, it has been a matter of controversy how far (if at all) an employer has been required to consult about its reasons for deciding that redundancies are necessary.

The recent case of *UK Coal Mining Ltd v National Union of Mineworkers (Northumberland Area)* has brought a timely reminder to any employer who harbours those thoughts. In that case, which involved the closure of a mine, the court, departing from previous and, in some cases recent, decisions, held that there is an obligation to consult over the reasons for a workplace closure where the closure will inevitably result in redundancy dismissals. The court held that the obligation to consult over avoiding proposed redundancies necessarily involves the reasons for dismissals, and that in turn required consultation over the reasons for the closure. Previous decisions to the effect that there was no need to consult over the reasons for a closure are no longer good law. The court also upheld the penal nature of the protective award made against the employers for failing properly to consult - confirming that this is based upon the nature and seriousness of the employer's default.

This year we look to the further extension of the ICE Regulations to employers with more than 50 employees. It is only reasonable to assume that the courts will be looking to employers to show greater openness and greater willingness to fully and genuinely consult before significant decisions affecting the workforce are taken. Given the reduction in the power of the unions over the years Employers will normally always have the ultimate say in collective redundancy matters, but those who do not treat their consultation requirements seriously will be punished.



For further information please contact:
0141 204 2700 or visit: mcclurenaismith.com