



Case of the Month

Many redundancy exercises take place without enough planning. As a result mistakes are made which later prove both expensive and embarrassing. It may be surprising but one common error is to be unclear about the reason for the redundancy. This is what seems to have happened in the case of **Strand Transport Services Limited v Whitworth** [2009] EWCA Civ 858

Whitworth was a General Manager at the Head Office of a transport business. He was made redundant in 2008 and brought a claim for unfair dismissal which he won and he was awarded £21,219.60. In preparing the case for a hearing the employers claimed that there had been fair consultation and that the reason for the dismissal was that it was centralising its business by introducing a new IT system. This argument was rejected by the tribunal on the facts and it held that the introduction of this system had not had the impact on Whitworth's job that had been claimed. The consultation was held to be a sham.

During the hearing the employers also came up with another reason for the redundancy. They argued that the General Manager's responsibilities had been "swallowed up" by those of different Depot Managers and that made his selection for redundancy inevitable. They said this was in mind at the time of the dismissal and discussed with Whitworth. Unfortunately for the employers this explanation was not included when Whitworth was given reasons for his dismissals nor when the employers set out the grounds of resistance to the claim.

It was only raised in the witness statements submitted by the employer and then argued at the hearing. The employers wanted to rely on the principle in **Polkey v AE Dayton Services** [1988] 1 AC 344 that has the effect of allowing a dismissal to be fair in the absence of consultation if consultation is truly pointless. In this case (as the statutory procedures applied) the argument would have disallowed the compensatory award.

The argument failed in the tribunal, the Employment Appeal Tribunal and the Court of Appeal. The appellate courts upheld the tribunal's right to have rejected it on the facts and the tribunal was clearly influenced by the manner in which the employers had presented their case. Proper planning and clarity at the outset might have avoided this muddle and the adverse decision. In the event the employers have to pay the employee's costs in the Court of Appeal on top of the compensation.

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Further Information

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