

Neutral Citation no. [2007] NICA 27 (1)

Ref: CAMC5879

Judgment: approved by the Court for handing down

Delivered: 10/7/07

(subject to editorial corrections)*

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

APPEAL BY WAY OF CASE STATED FROM A DECISION OF AN
INDUSTRIAL TRIBUNAL

BETWEEN:

BOMBARDIER AEROSPACE/ SHORT BROTHERS PLC

Appellant;

- and -

WILLIAM JOHN McCONNELL, GLENN LARMOUR AND ANDREW
STEWART GALLAGHER

Respondents.

Campbell LJ, Higgins LJ and Girvan LJ

CAMPBELL LJ

[1] I agree with Girvan LJ that the question in the case stated should be answered in the affirmative.

[2] Where a claim for interim relief had been presented before the end of the period of seven days following the effective date of termination and, if required by article 163 (3), a certificate has been presented within the same period, the tribunal has to proceed to decide if the employee is entitled to apply for interim relief.

[3] It does so by determining as soon as practicable, as a question of fact, whether the complaint alleges that the reason or principal reason for the dismissal is one of those specified in article 163 (1)(b) of the Order.

[4] Having decided that the employee is *entitled* to apply for interim relief the next stage is for the tribunal to hear the employee's application for relief under article 164. It is at this stage that the tribunal has to decide if it is likely that on determining the complaint it will find that the reason, or if more than one the principal reason, for the dismissal was one of those specified in article 164 (1).

[5] This two stage approach permits the tribunal to reject at the outset claims for interim relief where the principal reason for dismissal given in the complaint does not fall within article 163(1) (b). At the second stage the tribunal decides if interim relief should be granted and does so by considering the likelihood of a decision that the principal reason for dismissal is one of those specified.

[6] It is regrettable that in the present case the tribunal was invited to state a case at the preliminary stage of an application for interim relief particularly when it is at the following stage, where the tribunal is identifying the principal reason for dismissal, that guidance from this court may prove helpful.

[7] With this in mind I make the following observations. Redundancy where it appears in the Order is defined in article 174 in these terms;

“...an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to-

- (a) the fact that his employer has ceased or intends to cease-
 - (i) to carry on the business for the purposes of which the employee was employed by him, or
 - (ii) to carry on that business in the place where the employee was so employed, or
- (b) the fact that the requirements of that business-
 - (i) for employees to carry out work of a particular kind, or
 - (ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.”

[8] Where the principal reason for dismissal is redundancy within the meaning of the Order and an employee is selected for dismissal for one of the reasons specified his dismissal is to be regarded as unfair under article 137 however, he cannot apply for interim relief under article 163.

[9] If an employee seeks to make the case that although there was redundancy the reason why he was selected and not a fellow employee for dismissal is that he is a member of an independent trades union it does not follow that this becomes the principal reason for his dismissal though he is to be regarded as unfairly dismissed. If in such circumstances it could displace redundancy as the principal reason for dismissal the employee would come within article 136 and be regarded as unfairly dismissed. There would be no requirement for article 137 if unfair selection could become the principal reason.

[10] Should an employer decide to dismiss an employee for one of the specified reasons and create a redundancy for this purpose the principal reason for dismissal would not be redundancy and the employee would be unfairly dismissed within article 136(1)

[11] Article 137 is intended to cover the particular situation of redundancy and once it is established that there is redundancy within the meaning in the Order and that this is the principal reason for dismissal unfair selection may make the dismissal unfair but it does not become the principal reason for dismissal.

[12] Where a tribunal decides that there should be interim relief under article 164 (2) it may ask the employer if he is willing to reinstate the employee or to re-engage him in another job and if he is unwilling to do so it has power to make an order for the continuation of employment. If the employer has ceased to carry on business due to redundancy this remedy would be of no value. It is for this reason that interim relief is not available where the principal reason for dismissal is redundancy.