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Judgment: approved by the Court for handing down
*(subject to editorial corrections)**

IN THE COURT OF APPEAL IN NORTHERN IRELAND

Between:

BOMBARDIER AEROSPACE / SHORTS BROTHERS PLC

Appellant;

-and-

WILLIAM JOHN McCONNELL, GLENN LARMOUR and
ANDREW STEWART GALLAGHER

Respondents;

Before: Campbell LJ, Higgins LJ, and Girvan LJ

HIGGINS LJ

[1] This is a case stated by an Industrial Tribunal. The respondents are three former employees of the appellant company. On 15 February 2007 the respondents lodged claims with the Industrial Tribunal alleging unfair dismissal. In paragraph 7.1 of their claims each of them alleged they were employed by the appellant as a fitter until their dismissal by way of redundancy on 9 February 2007. Each challenged the grades determined in the appellant's assessment of their Productivity and Performance. All three also alleged that the system for selection for redundancy was unduly selective and that in dismissing them by way of redundancy the appellant took improper account of their trade union activities. One of them alleged that in addition improper account was taken of his activities as a health and safety representative. All three stated in their application forms that they wished to claim Unfair Dismissal and to make an application for interim relief pending determination of the Unfair Dismissal claim.

[2] Article 163 of the Employment Rights (NI) Order 1996 (the 1996 Order) makes provision for interim relief in respect of a complaint to an Industrial Tribunal. Article 163(2) provides that an application for interim relief must be presented within 7 days of termination of employment and Article 163(3)

requires a certificate in writing from an authorised trade union official that the employee was a trade union member and that there appear to be reasonable grounds for supposing that the reason for his dismissal was one alleged in the complaint to the Tribunal. Both of these conditions have been fulfilled. Article 164 makes provision for the procedure to be adopted on an application for interim relief and the relief that may be granted.

[3] The respondents' applications for interim relief came on for hearing on 21 March 2007. Under Article 163(7) such applications should be listed for hearing as soon as practicable. At the hearing counsel on behalf of the appellants submitted that the Tribunal did not have jurisdiction to hear and determine the respondents' applications for interim relief because Article 163 of the 1996 Order did not apply in redundancy cases. The Tribunal concluded that it did have jurisdiction under Article 163 to hear and determine the applications for interim relief. The appellants requested the Tribunal to state a case for the Court of Appeal to determine the following question of law –

> "Was the Tribunal correct in law in deciding that it had jurisdiction to consider the respondents' application for interim relief under Article 163."

[4] Article 164 empowers a Tribunal to grant interim relief in limited circumstances only. The Tribunal may only grant interim relief where it appears to the Tribunal that it is likely, on determining the complaint to which the application relates, the Tribunal will find that the reason or principal reason for dismissal is one of those specified in various Articles in Part XI Chapter I of the 1996 Order. The Tribunal has yet to reach that stage and it would seem there are grounds for supposing this appeal by way of case stated is premature. Be that as it may, the Tribunal may only grant interim relief if is likely to find that the reason or principal reason for dismissal is a reason specified in Articles 132(1) (a) or (b), 133, 134, 136(1) of the 1996 Order as originally drafted (and 132A(d), 134A or 161(2) of Schedule 1A of the Trade Union and Labour Relations Order 1995 as amended).

[5] The thrust of the appellant's submission before the Tribunal was that Parliament did not intend to confer jurisdiction and provide a remedy by way of interim relief in cases involving redundancy. The respondents contended that the Tribunal required to focus on the contents of the Claim Form and what the claimants alleged as the reason or the principal reason for dismissal.

[6] Mr Brangham QC, who appeared on behalf of the appellant, traced the history of employment legislation in the United Kingdom. He pointed to the existence of redundancy many years before the introduction of the right not to be unfairly dismissed and the emergence of interim relief, albeit in limited circumstances, as recently as 1992. Yet in enacting Article 163 in 1996

Parliament saw fit not to include redundancy specifically among the circumstances that could give rise to interim relief.

[7] The respondents were made redundant. Part XII (Chapters I to VII Articles 170 to Article 215) and Part XIII of the 1996 Act relate to redundancy and the rights and restrictions arising from it. Part XII Chapter I establishes the right to redundancy payment. Article 170 provides that an employer shall pay a redundancy payment to an employee who is dismissed by reason of redundancy. Chapter II is entitled Right on Dismissal by Reason of Redundancy. Article 171 relates to the circumstances in which an employee is dismissed. Article 172(1) provides that the failure of an employer to permit an employee to return to work after childbirth shall be treated as a dismissal. Article 172(2) specifies the date of such a dismissal where the employer shows that the reason for the failure was that the employee was made redundant. Article 173 provides that no dismissal occurs where the employee's contract is renewed or he is re-engaged.

[8] Redundancy is defined in Article 174 of the 1996 Order. This provides –

> "174(1) For the purposes of this Order an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to-
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> (a) the fact that his employer has ceased or intends to cease-
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> (i) to carry on the business for the purposes of which the employee was employed by him, or
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> (ii) to carry on that business in the place where the employee was so employed, or
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> (b) the fact that the requirements of that business-
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> (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.
>
> (5) In paragraph 1 'cease' and 'diminish' mean cease and diminish either permanently or temporarily and for whatever reason."

[9] Articles 175 to 179 prescribe circumstances in which redundancy payments are excluded, one of which is the occurrence of a strike during the period of an employer's notice to terminate an employee's contract. Article 176 provides, inter alia, that upon renewal of his contract or re-engagement under a new contract of employment, on foot of an offer by the employer, the employee is not entitled to redundancy payment. Redundancy payment is calculated according to the length of service of the employee. The respondents in this case have service for 10 years, 6 years and 23 years. Each of the respondents has received redundancy payment. All three claim re-engagement in their former employment or similar employment, together with compensation.

[10] Part XIII makes provision for various procedures for handling redundancy issues. Article 247(1) provides that an employee's remedy for the infringement of various rights conferred by certain Parts of the 1996 Order is by way of complaint to an industrial tribunal. Part XII relating to redundancy is excluded from Article 247. The 1996 Order repealed the Contracts of Employment and Redundancy Act (NI) 1965, which made no provision for interim relief.

[11] Part XI (Chapters I to III, Articles 126 to 169) of the Order relates to Unfair Dismissal. Chapter I relates to the Right not to be Unfairly Dismissed which is enshrined in Article 126. Article 127 refers to the circumstances in which an employee is dismissed. Article 128 provides that an employee who is not permitted to return to work after childbirth shall be treated for the purposes of Part XI as dismissed, and unfairly dismissed in certain circumstances. These mirror the provisions relating to Redundancy referred to above. Articles 130 to 139, under the heading 'Fairness', make provision for the circumstances in which dismissal should be treated as unfair. These include Article 132 and 136. Article 132 is headed 'Health and Safety cases'. This Article protects a worker's representative on health and safety issues whose principal reason for dismissal relates to his activities as that representative and provides that he shall be regarded as unfairly dismissed. Article 136 is headed 'Trade Union Membership or Activities' and is similar to Article 132. It protects trade union membership and activities. Where the principal reason for dismissal is such membership or activities the employee is regarded as having been unfairly dismissed. Articles 131, 133, 134, 135 relate to other situations in which dismissal shall be regarded as unfair dismissal, namely, pregnancy and childbirth, through trusteeship of

occupational pension schemes, holding a position as an employee representative and where the employee asserts a statutory right.

[12] Article 137 makes provision for a person who is dismissed by reason of redundancy to be regarded as unfairly dismissed in certain circumstances specified in sub-paragraphs (2) to (7). The circumstances specified correspond to the circumstances set out in Articles 131 to 136. The original enactment of Article 137 was in the following terms –

> 137. - (1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if-
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> (a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee was redundant,
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> (b) it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer, and
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> (c) it is shown that any of paragraphs (2) to (7) apply.
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> (2) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in paragraphs (a) to (d) of paragraph (1) of Article 131 (read with paragraph (2) of that Article (and any requirements of the sub-paragraph or paragraph, not relating to the reason are satisfied).
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> (3) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in paragraph (1) of Article 132 (read with paragraphs (2) and (3) of that Article).
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> (4) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in Article 133(1).
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> (5) This paragraph applies if the reason (or, if more than one, the principal reason) for which the

employee was selected for dismissal was that specified in Article 134.

(6) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in paragraph (1) of Article 135 (read with paragraphs (2) and (3) of that Article).

(7) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in Article 136(1) (read with paragraph (3) of that Article)

(8) In this Part 'redundancy case' means a case where sub-paragraphs (a) and (b) of paragraph (1) of this Article are satisfied."

[13] Thus to be a redundancy case for the purposes of Article 137, the reason or principal reason for the dismissal must be that the employee is redundant and it is shown that the redundancy applied equally to one or more other employees who held positions similar to that held by the employee and who have not been dismissed. For the dismissal to be unfair one of the sub-paragraphs (2) to (7) must apply. These sub-paragraphs bring in the circumstances specified in Articles 131 to 136. Thus it seems clear that Articles 131 to 136 do not apply to a redundancy case, except where Article 137 applies. Sub-paragraphs (2) to (7) of Article 137 transform dismissal by reason of redundancy into unfair dismissal where the selection for redundancy is due to childbirth (Article 131), health and safety issues (Article 132), trade union activities (Article 136) etc.

[14] Chapter II Articles 145 to 167 relate to Remedies for Unfair Dismissal. Article 145 provides that any person may present a complaint against an employer to an industrial tribunal that he was unfairly dismissed. Articles 146 & ff make provision for the orders that may be made on a finding of Unfair Dismissal. These include orders for reinstatement and re-engagement and orders for compensation. Article 163 provides for interim relief and Article 164 for the procedure on the hearing of an application for interim relief.
The original enactment of Article 163 was in the following terms –

163. - (1) An employee who presents a complaint to an industrial tribunal-

(a) that he has been unfairly dismissed by his employer, and

(b) That the reason (or, if more than one, the principal reason) for the dismissal is one of those specified in Article 132(1)(a) and (b), 133(1), 134, or 136(1) may to the tribunal for interim relief.

(2) The tribunal shall not entertain an application for interim relief unless it is presented to the tribunal before the end of the period of seven days immediately following the effective date of termination (whether before, on or after that date).

(3) In a case where the employee relies on Article 136(1)(a), (b), the tribunal shall not entertain an application for interim relief unless before the end of that period there is also so presented a certificate in writing signed by an authorised official of the independent trade union of which the employee was or proposed to become a member stating-

(a) that on the date of the dismissal the employee was or proposed to become a member of the union, and

(b) that there appear to be reasonable grounds for supposing that the reason for his dismissal (or, if more than one, the principal reason) was one alleged in the complaint.

(4) An "authorised official" means an official of the trade union authorised by it to act for the purposes of this Article.

(5) A document purporting to be an authorisation of an official by a trade union to act for the purposes of this Article and to be signed on behalf of the union shall be taken to be such an authorisation unless the contrary is proved; and a document purporting to be a certificate signed by such an official shall be taken to be signed by him unless the contrary is proved.

(6) For the purposes of paragraph (3) the date of dismissal shall be taken to be-

> (a) where the employee's contract of employment was terminated by notice (whether given by his employer or by him), the date on which the notice was given, and
> (b) in any other case, the effective date of termination.
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> (7) The tribunal shall determine the application for interim relief as soon as practicable after receiving the application and, where appropriate, the requisite certificate.
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> (8) The tribunal shall give to the employer not later than seven days before the date of the hearing a copy of the application and of any certificate together with notice of the date, time and place of the hearing.
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> (9) If a request under Article 169 is made three days, or more before the date of the hearing, the tribunal shall also give to the person to whom the request relates, as soon as reasonably practicable, a copy of the application and of any certificate, together with notice of the date, time and place of the hearing.
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> (10) The tribunal shall not exercise any power it has of postponing the hearing of an application for interim relief except where it is satisfied that special circumstances exist which justify it in doing so."

[15] The procedure to be adopted on an application for interim relief is set out in Article 164. As originally passed it was in the following terms –

> "164. - (1) This Article applies where, on hearing an employee's application for interim relief, it appears to the tribunal that it is likely that on determining the complaint to which the application relates the tribunal will find that the reason (or, if more than one, the principal reason) for his dismissal is one of those specified in Article 132(1)(a) and (b), 133(1), 134, or 136(1).
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> (2) The tribunal shall announce its findings and explain to both parties (if present) -
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> (a) what powers the tribunal may exercise on the application, and

(b) in what circumstances it will exercise them.

(3) The tribunal shall ask the employer (if present) whether he is willing, pending the determination or settlement of the complaint-

(a) to reinstate the employee (that is, to treat him in all respects as if he had not been dismissed), or

(b) if not, to re-engage him in another job on terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed.

(4) For the purposes of paragraph (3)(b) "terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed" means, as regards seniority, pension rights and other similar rights, that the period prior to the dismissal should be regarded as continuous with his employment following the dismissal.

(5) If the employer states that he is willing to reinstate the employee, the tribunal shall make an order to that effect.

(6) If the employer-

(a) states that he is willing to re-engage the employee in another job, and

(b) specifies the terms and conditions on which he is willing to do so,

the tribunal shall ask the employee whether he is willing to accept the job on those terms and conditions.

(7) If the employee is willing to accept the job on those terms and conditions, the tribunal shall make an order to that effect."

[16] It is noteworthy that the procedure requires the Tribunal to ask the employer, if present, whether he is willing to reinstate or re-engage the employee. In a redundancy situation the requirement for the employee to

carry out work of a particular kind or at a particular place has ceased or diminished or the business of the employer has ceased. If an employee has been made redundant it is difficult to contemplate how the employer in the circumstances outline above could reinstate or re-engage the employee.

[17] By the Parts, Chapters and Sections of the 1996 Order as set out, it is clear that Parliament identified in broad terms two distinct employment situations that require legislative protection and support. These are Unfair Dismissal and Redundancy. This reflected the historical development of employment law and each remained to be considered separately. Each has its own rights and remedies. The only overlap involved the inclusion of certain unfair selection for redundancy cases as unfair dismissal under Article 137. Article 137 was specifically omitted from the grounds on which interim relief could be granted. The Tribunal in this instance correctly found that a claim that fell within Article 137 could not be the subject of interim relief. The important question is why claims under Article 137, which relate to unfair selection for redundancy were omitted, when claims for unfair dismissal under Articles 131 to 136 and 138 and 139 were included. The rationale for the distinction lies in the reason or principal reason for dismissal namely redundancy. This is consistent with the development of employment law and the structure of the 1996 Order. It places redundancy on a separate footing.

[18] Since the passing of the 1996 Order major amendments have been made to Part XI of the Order and additional grounds for claiming unfair dismissal have been included in the legislation. This has resulted in substantial amendment to Article 163 and Article 137. Article 163 now states –

> "163. - (1) An employee who presents a complaint to an industrial tribunal-
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> (a) that he has been unfairly dismissed by his employer, and
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> (b) that the reason (or, if more than one, the principal reason) for the dismissal is one of those specified in Article 132(1)(a) and (b), 132A(d), 133(1), 134, 134A or 136(1) or in paragraph 161(2) of Schedule 1A to the Trade Union and Labour Relations Order, may apply to the tribunal for interim relief.
>
> (2) The tribunal shall not entertain an application for interim relief unless it is presented to the tribunal before the end of the period of seven days immediately following the effective date of termination (whether before, on or after that date).

(3) In a case where the employee relies on Article 136(1)(a), (b) or (ba), or on Article 136(1)(bb) otherwise than in relation to an offer made in contravention of Article 77A(1)(d), the tribunal shall not entertain an application for interim relief unless before the end of that period there is also so presented a certificate in writing signed by an authorised official of the independent trade union of which the employee was or proposed to become a member stating-

(a) that on the date of the dismissal the employee was or proposed to become a member of the union, and

(b) that there appear to be reasonable grounds for supposing that the reason for his dismissal (or, if more than one, the principal reason) was one alleged in the complaint.

(4) An "authorised official" means an official of the trade union authorised by it to act for the purposes of this Article.

(5) A document purporting to be an authorisation of an official by a trade union to act for the purposes of this Article and to be signed on behalf of the union shall be taken to be such an authorisation unless the contrary is proved; and a document purporting to be a certificate signed by such an official shall be taken to be signed by him unless the contrary is proved.

(6) For the purposes of paragraph (3) the date of dismissal shall be taken to be-

(a) where the employee's contract of employment was terminated by notice (whether given by his employer or by him), the date on which the notice was given, and

(b) in any other case, the effective date of termination.

(7) The tribunal shall determine the application for interim relief as soon as practicable after receiving the

application and, where appropriate, the requisite certificate.

(8) The tribunal shall give to the employer not later than seven days before the date of the hearing a copy of the application and of any certificate together with notice of the date, time and place of the hearing.

(9) If a request under Article 169 is made three days, or more before the date of the hearing, the tribunal shall also give to the person to whom the request relates, as soon as reasonably practicable, a copy of the application and of any certificate, together with notice of the date, time and place of the hearing.

(10) The tribunal shall not exercise any power it has of postponing the hearing of an application for interim relief except where it is satisfied that special circumstances exist which justify it in doing so."

[19] Article 137 now states –

137. - (1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if-

(a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee was redundant,

(b) it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer, and

(c) it is shown that any of paragraphs (2A) to (7G) [and to (7I)] apply.

(2A) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in paragraph (1) of Article 130B (unless the case is one to which paragraph (2) of that Article applies).

(3) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in paragraph (1) of Article 132 (read with paragraphs (2) and (3) of that Article).

(3A) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in Article 132A.

(4) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in Article 133(1).

(5) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in Article 134.

(5A) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in Article 134A.

(6) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in paragraph (1) of Article 135 (read with paragraphs (2) and (3) of that Article).

(6A) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in paragraph (1) of Article 135A (read with paragraph (2) of that Article).

(6B) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in paragraph (1) of Article 135B (read with paragraph (2) of that Article).

(6C) This paragraph applies if the reason (or, if more than one, the principal reason) for which the

employee was selected for dismissal was one of those specified in Article 135C.

(7) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in Article 136(1) (read with paragraph (3) of that Article).

(7A) This paragraph applies if-

(a) the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the reason mentioned in Article 144A (participation in official industrial action), and

(b) paragraph (3), (4) or (5) of that Article applies to the dismissal.

(7B) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 28 of the Transnational Information and Consultation of Employees Regulations SI 1999/3323 (read with paragraphs (4) and (7) of that regulation).

(7C) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) of regulation 7 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) SR 2000/219 (unless the case is one to which paragraph (4) of that regulation applies).

(7D) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) of regulation 6 of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2002 (unless the case is one to which paragraph (4) of that regulation applies). [added SR 2002/298 from 1 Oct 2002]

(7E) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 42 of the European Public Limited-Liability Company Regulations (Northern Ireland) SR 2004/417 (read with paragraphs (4) and (7) of that regulation). [added SR 2004/417 on 8 Oct 2004]

(7F) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 30 of the Information and Consultation of Employees Regulations (Northern Ireland) SR 2005/47 (read with paragraphs (4) and (7) of that regulation). [added SR 2005/47 on 6 April 2005.

(7G) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph 5(3) or (5) of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) SR 2006/48 (read with paragraph 5(6) of that Schedule). [added 6 April 2006]

(7H) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 31 of the European Cooperative Society (Involvement of Employees) Regulations SI 2006/2059 (read with paragraphs (4) and (7) of that regulation). [added 18 Aug 2006]

(7I) [added 6 April 2007] This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that he—

(a) exercised or sought to exercise his right to be accompanied in accordance with paragraph 9 of Schedule 5 to the Employment Equality (Age) Regulations (Northern Ireland) SR 2007/225, or

(b) accompanied or sought to accompany an employee pursuant to a request under that paragraph.

(8) In this Part "redundancy case" means a case where sub-paragraphs (a) and (b) of paragraph (1) of this Article are satisfied."

Redundancy has not been added by any of those amendments. Thus it seems clear that a person who has been made redundant has no right to claim interim relief nor has a person who falls within Article 137.

[20] In their claim forms at paragraph 7 the respondents each state that they were dismissed by reason of redundancy. They claim that the employer, in dismissing them by way of redundancy, took improper account of their trade union or health and safety activities. They then set out the nature of those activities. They each claim unfair dismissal but do not identify any section of Part XI of the 1996 Order as being applicable, nor any particular activity that is alleged to fall clearly within Article 132 or 136.

[21] The Tribunal held that the nature of the claims as presented enabled it to determine that the claims fell arguably within either Article 132 and/or Article 136. In paragraph 4 of the Case Stated the Tribunal accepted that each of the claim forms made reference to unfair selection for redundancy, but concluded that the claims as framed did not fall squarely within the scope of Article 137. The reason the Tribunal concluded that they did not fall within Article 137 was that it was not contended in the claim forms that there were other employees in the same undertaking who held similar positions to those held by the respondent but had not been dismissed by the appellant. However, neither did they claim that they were the only employees selected for redundancy. The absence of a claim that there were other employees in a similar position to themselves who were not dismissed merely had the effect of placing the claims outside the ambit of the terms of Article 137.

[22] It is correct that the respondents did not make an overt claim under Article 137. They could not have done so and at the same time sought interim relief as claims under Article 137 are not included in the list of claims for which interim relief can be granted under Article 163. However the claim form requires to be read as a whole and in a reasonable manner. What the respondents in fact were alleging was unfair selection for redundancy, without overtly making that claim in their claim form. In framing the claim in the way they did it seems they were seeking to circumvent Article 137. In finding that the claims as drafted arguably fell within Article 132 and 136, the Tribunal have not considered the fact that the respondents were made redundant. There is no provision for redundancy in Articles 131 or 136. Therefore the claims could never fall within either of those Articles or any of

the other Articles mentioned in Article 163 as amended. If it was open to an employee to rely on Articles 131 or 136 in a redundancy situation there would be no need for Article 137.

[23] The Tribunal referred to the wording of Article 163. This provides that an employee who presents a complaint that the employee has been unfairly dismissed and that the reason for the dismissal is one of those specified in the various Articles mentioned, may apply to the Tribunal for interim relief. None of the respondents claim that the reason for their dismissal was one of those specified in Article 163(1)(b) as amended. They simply claim unfair dismissal alleging that their trade union or health and safety activities, some of which are particularised, were wrongly taken into account. The Tribunal found that the claims as presented arguably fell within Article 132 or 136. This means the Tribunal contemplated that it was likely the Tribunal would find the respondents were dismissed for one of the reasons set out in Article 132 or 136. This would involve the Tribunal finding that they were not made redundant, yet it is indisputable that they were made redundant. The Tribunal simply cannot ignore the fact of redundancy, which is what they appear to have done. However if they had recognised that redundancy plays no part in Article 132 and 136 they would not have fallen into error.

[24] It is suggested that the rationale behind the availability of interim relief is to preserve the status quo where industrial relations may have broken down. That may be so relating to unfair dismissal, but should not arise in a redundancy situation, nor is there any evidence of it. Under Parts XII and XIII redundancy is a more controlled occurrence with consultation with employee representatives and notice given, where one of the major issues is the amount of redundancy to be paid and when. Provision is made for complaints to the industrial tribunal on a few issues, but not relating to the grounds for redundancy.

[25] The submission made to the Tribunal on behalf of the appellant was that interim relief did not extend to a redundancy situation. The Tribunal agreed, in so far as it related to Article 137. The Tribunal then went on to consider the complaint form and held that arguably the claims as presented fell within the scope of Article 132 or Article 136. The question posed in the case stated is – 'Was the Tribunal correct in law in deciding that it had jurisdiction to consider the respondents' claims for interim relief under Article 163 of the Order'. For the reasons given I would answer that question 'No'. The Tribunal did not have jurisdiction to consider a claim for interim relief where the employee was made redundant. In addition the Tribunal did not have jurisdiction to consider a claim for unfair dismissal in redundancy except under Article 137. Having concluded correctly that Article 137 did not apply the Tribunal could not consider the claims in isolation of the fact that the respondents had been made redundant, but were bound to consider that issue. If they had considered the question of redundancy they would have

concluded that the claims could not arguably fall within the scope of either Article 132 or 136 or any of the other Articles set out in Article 163. Therefore the Tribunal did not have jurisdiction to hear the respondents' claims for interim relief.