

Unfair Dismissal?

Garside and Laycock Ltd v Booth UKEAT 0003/11



In the current economic climate, employers may want to reduce employees' remuneration or hours of work, whether on a temporary or permanent basis, as an alternative to redundancies. If an employee does not accept the pay cut and the employer has no unilateral power in the employment contracts to impose one, a dismissal may result after a careful consultation. Dismissals for refusing pay cuts or a reduction in other terms have been on the increase. The recent case of *Garside and Laycock Ltd –v- Booth* makes it clear that employers cannot simply rely upon their business being in a difficult financial position in order to justify imposing such changes. Instead the employer must look at how cuts can be born equitably amongst a workforce and must ensure that any negotiations to seek agreement to cuts are open and fair.

In this case the employer asked its staff to accept a pay reduction of 5% to avoid redundancies and increase profits. Of the 77 employees, Mr Booth was the only one who would not accept the reduction. Mr Booth was dismissed and took a claim to the Employment Tribunal for unfair dismissal. In the first instance, Mr Booth was successful however the employer appealed to the Employment Appeals Tribunal (EAT). The EAT confirmed that, in addition to considering whether or not in the circumstances (including the employer's size and administrative resources) the employer had acted reasonably in treating the employee's refusal to accept a pay cut as a sufficient reason for dismissing the employee, a tribunal must also consider whether or not the dismissal was 'in accordance with equity'. The EAT indicated that this included considering factors such as whether management who sought to impose the pay cut had also taken a cut and whether or not the process by which the pay cut was negotiated was fairly dealt with. The case was sent back to the tribunal to consider it in accordance with the EAT's guidance.

If you are considering alternative approaches to avoid redundancies you should take advice. Contact our employment team for further assistance on employment@howell-jones.com or 020 8549 5186.



Can we help?

For further information on the issues raised in this newsletter or to obtain further assistance, please contact our employment team on:

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