

Alexander & Hatherley v Bridgen Enterprises Ltd – Redundancy and the Statutory Dismissal Procedure

As you are probably aware, the statutory dismissal procedure has caused a lot of confusion and has produced many questions since they were introduced in October 2004.

In this case the employer had made a number of compulsory redundancies and an important issue concerned what information should have been provided to the employees in order for the employer to have complied with its obligations under the statutory dismissal procedure.

The Employment Appeal Tribunal (“EAT”) has now provided some guidance as to the information the employer should provide to employees when going through the redundancy process.

Step 1 of the statutory dismissal procedure states that the employer must:

1. set out in writing the employee's alleged conduct or characteristics, or other circumstances, which led him to contemplate dismissing or taking disciplinary action against the employee;
2. send the statement or a copy of it to the employee and invite the employee to attend a meeting to discuss the matter.

The EAT held that step 1 requires that the employer tells the employee that they are at risk of dismissal and why (i.e. by reason of redundancy). Further detail does not need to be provided at this stage.

However, further detail will need to be provided if an employer is to comply with step 2 of the statutory dismissal procedure. Step 2 requires that before a meeting is held the employer must inform the employee what the basis was for including the ground/s given in the statement/letter under step 1 and must allow the employee a reasonable opportunity to consider their response to that information.

The EAT held that in order to comply with step 2 the employer **must provide** the employee with the following information:

- the basis for the ground/s given in the statement/letter provided under step 1. This means providing information about matters which have led the employer to contemplate dismissing the employee for the stated ground/s, in this case

providing information about the circumstances that have resulted in a redundancy situation. However this information does not need to be given in writing; and

- an explanation as to why the employer is contemplating dismissing that particular employee. This involves, in a redundancy situation explaining why the particular employee is being selected. The employer should notify the employee of the selection criteria and the employee's own assessment based on the selection criteria.

DISCLAIMER

All information in this update is intended for general guidance only and is not intended to be comprehensive, or to provide legal advice. If you have any questions on any issues either in this update or on other areas of employment law, please contact Parker & Co. We do not accept responsibility for the content of external internet sites linked to in this update.

We currently hold your contact details to send you Parker & Co Employment Updates or other marketing communications. If your details are incorrect, or you do not wish to receive these updates, please let us know by emailing: info@parkerandcosolicitors.com

However the employer **does not have to provide:**

- the mark which the employee would need in order to remain in employment; or
- the assessments for other employees; or
- specific guidelines used by management in the assessment exercise.

Employers should note however that although this information is not required under the statutory dismissal procedure it may be that failure to provide it in a particular circumstance would render the dismissal unfair under general unfair dismissal law.

The decision of the EAT to apply its findings to all redundancy cases rather than just to the particular circumstances of this case is likely to prove controversial. The purpose of the statutory dismissal procedure is to provide a general minimum procedure rather than a prescriptive minimum procedure. Matters outside the bare minimum of the procedure would normally be dealt with under general unfair dismissal law. We therefore anticipate that the findings of this case are likely to be challenged in the future, although the decision itself is apparently not being appealed.

CONTACT US

Helen Parker
Richard Woolmer
Dan Begbie-Clench
Jackie Holden

020 7614 3501
020 7614 3505
020 7614 3504
020 7614 3508

helen.parker@parkerandcosolicitors.com
richard.woolmer@parkerandcosolicitors.com
dan.begbie-clench@parkerandcosolicitors.com
jackie.holden@parkerandcosolicitors.com