

No Headcount Reduction Needed for Redundancy

Does there have to be a reduction in headcount for there to be a genuine redundancy situation? The EAT make things clearer for employers.

The Employment Appeal Tribunal has handed down its decision in the case of **Packman v Fouchon UKEAT/0017/12** and in doing so, has clarified a point that has been under discussion since a previous EAT decision in **Aylward and Others v Glamorgan Holiday Home Ltd UKEAT/0167/02 in 2003**; did there have to be a need for a reduction in headcount for there to be a genuine redundancy situation?

Ms Fouchon was employed by Mr Packman as the only bookkeeper in his business. The business suffered a downturn in work and introduced new accounting software. The net result was a reduction in the amount of bookkeeping work that the business needed.

Mr Packman approached Ms Fouchon with a request that she reduce the number of hours that she worked. When she refused, she was dismissed. The Employment Tribunal at London South found that there was a redundancy situation and dismissed Ms Fouchon's other claims, including a claim for unfair dismissal. Mr Packman appealed on the basis that the **Aylward** case required a reduction in headcount to be needed for a redundancy situation to exist.

In delivering the Judgment in the Case, the President of the EAT, the Honourable Mr Justice Langstaff, confirmed what many employment lawyers (including the editors of Harvey on Industrial Relations and Employment Law) had suspected since the decision in **Aylward** was made; it had been wrongly decided.

Section 139 Employment Rights Act 1996 sets out the definition of redundancy. It states (in paraphrased form) that a redundancy exists where a dismissal is wholly or mainly attributable to the fact that the requirements of a business for employees to carry out work of a particular kind have ceased or diminished, or are expected to cease or diminish.

The EAT decided that this definition does not require a reduction in headcount to classify a dismissal as being for the reason of redundancy.

The **Packman** decision can be found at http://www.bailii.org/uk/cases/UKEAT/2012/0017_12_1605.html

Need advice on making redundancies?

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