



Eatons

Consultation on Collective Redundancies

The Employment Appeal Tribunal (EAT) has ruled that the obligation on an employer, under section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992, to consult over collective redundancies extends to consultations over the reasons for the closure of a business (*UK Coal Mining Ltd. v National Union of Mineworkers*).

In the EAT's view, the obligation to consult over avoiding proposed redundancies inevitably involves examining the reasons for the dismissals and that in turn requires consultation over the reasons for the closure.

This is an important decision as it overturns previously binding authority on this area of the law. One difficulty is that EC Directive 98/59/EC provides that an employer should begin consultations when 'contemplating' making collective redundancies, whereas this duty is given effect in domestic law as being a duty to consult when an employer 'proposes to dismiss' employees as redundant.

The EAT held that as domestic law now stands, the obligation to consult over the avoidance of dismissals has significantly widened the scope of the consultation obligations. In its view, in a closure context, where it is recognised that dismissals will inevitably, or almost inevitably, result from closure, dismissals are proposed at the point when the closure of the business is proposed. Where closure and dismissals are inextricably linked, the duty to consult over the reasons for the closure arises.

It is important that employers are aware of this requirement to consult at an early stage in the decision-making process. Carrying out a redundancy programme always requires care and failure to consult as required can lead to an Employment Tribunal requiring the employer to make protective awards to the dismissed employees. If you are contemplating the closure of a business, or part of one, contact us immediately. We can help ensure that this difficult process is carried out with minimal risk of unanticipated financial consequences.

For advice on all aspects of employment law please contact Maureen Singleton, Head of Corporate and Employment Department on Tel: 01274 728 327.

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