

UK Employment Appeal Tribunal Clarifies Employer Obligations in a Redundancy

Article By:

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The United Kingdom's Employment Appeal Tribunal (EAT) ruling in [*Hendy Group Ltd v Mr D Kennedy* \[2024\] EAT 106](#) acts as a clear reminder to employers of their obligations when handling redundancies. The case emphasises that employers must properly seek and consider alternative employment for employees facing redundancy and highlights the risks of failing to do so. In particular, merely sending an "at risk" employee the company's job vacancy list (a popular approach taken by companies) may not be enough to fulfil obligations.

Quick Hits

- The UK's Employment Appeal Tribunal ruled that employers must actively seek and consider alternative employment for employees facing redundancy, as highlighted in *Hendy Group Ltd v Mr D Kennedy*.
- The EAT's decision underscores that simply providing a job vacancy list may be insufficient to meet employers' obligations during redundancy processes.
- Employers should consider taking proactive steps to support employees facing redundancy, beyond just posting job advertisements, to avoid legal and reputational risks, as emphasised by the EAT's ruling.

Principles of the Case

Kennedy, the claimant, had been employed by Hendy Group Ltd, one of the UK's largest multi-franchise dealership networks, since 2013 and from 2015 worked as a trainer in the company's training academy. His role involved providing training for the sales teams across the workforce. However, in 2020, due to the impact of the COVID-19 pandemic, a genuine redundancy situation occurred, leading to Kennedy's dismissal. Despite recognition that the redundancy itself was fair, Kennedy argued that the process that the company followed was unfair, as they failed to adequately consider alternative employment opportunities within the company. The EAT agreed and ruled in favour of the claimant on the grounds that despite maintaining a vacancy list Kennedy could access, the company had taken "no step whatever to assist Mr Kennedy" in finding an alternative role within the company. The EAT awarded him compensation on the basis that it was likely he would have been able to secure other employment within the company if the employer had properly adhered to its obligations.

Alternative Employment

The case upholds the concept that an employer has a positive legal duty to look for and sufficiently evaluate alternative employment for a worker who faces redundancy. This means seeking a position that offers the employee terms and conditions comparable to the employee's current role. Other cases have held that even if a position is lower in status and pay, it should be offered to the employee if the employee has the skills to do the work, as it is for the employee to decide whether to accept the pay cut. During Kennedy's notice period, sales positions became available in the company, including a role that Kennedy had previously held, yet these positions were not offered to him. He was simply told he could apply for advertised positions in the same manner as external applicants. The EAT expressed the view that the posting of job advertisements alone will not be deemed as an adequate assessment of alternative employment to fulfill the employer's duty.

The decision was possibly influenced by some other ill-judged actions by the company. The EAT also noted that upon unsuccessful application for alternative roles, Kennedy's motivations for job applications to the company were questioned, and he was informed that any additional applications would be unsuccessful. During this period, Kennedy's access to company emails, which HR was using to communicate with him, was also revoked, with the consequence that he did not see relevant emails.

Key Takeaways

Under the Employment Rights Act 1996, employers must follow a fair procedure during redundancies. This includes properly consulting with any impacted employees and considering suitable alternative employment opportunities within the company or affiliated entities.

An employer's obligations cannot usually be satisfied by merely referring an employee to a public job board without proactive support, appropriate internal communication, or significant consideration. Employers are required to go beyond mere formalities and take active steps to support employees facing redundancy. Failure to do so can result in costly legal consequences and reputational damage.

Lorraine Matthews contributed to this article

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