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WOLSEY ENGINEERING LTD: LEGAL PROBLEMS FOLLOWING RE-ORGANISATION TO ADAPT TO THE ECONOMIC ENVIRONMENT.

ABSTRACT

This report is mainly concerned with testing knowledge of employment law, in the specific topic of redundancy law, as well as the skill of applying that knowledge to the particular task set. This report firstly outlines a hypothetical problem occurring in a fictional company, Wolsey Engineering Ltd. and gives legal information about redundancy. Then it focuses on how to deal with relevant employees' situations fairly on the grounds of redundancy, how to go about offering the alternative employment to Chris, and what principles of law should apply. Finally, the recommendations are given for redundant employees.

1. INTRODUCTION

The purpose of this report is to consider and address a hypothetical problem occurring in a fictional company, Wolsey Engineering Ltd. and to briefly discuss solutions based upon principles of law for the problem, taking account of company's economic position. By examining a range of recently published journal articles, magazine articles and internet sites about current redundancy laws and employment laws, this report addresses matters of the company considering its economic position. The report then advises the company on these matters.

Wolsey Engineering Ltd is a small private company that has been established in the Ipswich area for 45 years. The company has been concerned with designing, producing and installing security gates for homes and businesses in the areas surrounding Essex, Suffolk and Norfolk. It has employed designers and electrical engineers for producing the security systems, which are fitted to the gates of residential and commercial clients at their premises by a team of installers. The installers have been responsible for fitting the security devices at the premises of the company's clients and ensuring that the system works satisfactorily before leaving the site. Owing to the increasing complexity of organising the installations operations, the company has decided to cut down on the scope of its activities and to concentrate solely upon the design and production of security systems to client specifications and to contract out the installation projects. One of the consequences of this decision is that there will no longer be a need for the installers, some or all of whom may have to be dismissed. The employees concerned are as follows:

- Adam, who is 60 and has worked for the company for 20 years;
- Brenda, who is 42 and has worked for the company for 1 year and 10 months;
- Chris, who is 27 and has worked for the company for 9 years

Chris is someone who has been recognized by the company as having the potential to be a gifted designer and the company would like to offer him alternative employment in that capacity, instead of making him redundant.

The company would like to know what steps they need to take in order to dismiss the relevant employees fairly on the grounds of redundancy. The company would also like to know how to go about offering the alternative employment to Chris and what principles of law apply to that process.

Company requires advices on these matters.

2. REDUNDANCY

2.1. Termination of the Contract of Employment

A contract of employment can be brought to an end by either the employer or employee giving reasonable notice to the other. The ERA 1996 contains statutory provisions in regard to *minimum* periods of notice, but a particular contract of service may provide for longer periods of notice than does the ERA. Under the ERA an employee is entitled to one week's notice after employment for one month or more; after two years' service the minimum entitlement is increased to two weeks, and for each year of service after that it is increased by one week up to a maximum of 12 weeks' notice after 12 years' service.

The termination of the contract can end by different ways such as unfair or discriminatory dismissal or redundancy, agreement etc (Riches, Allen, and Keenan, 2011, p.538).

2.2. Meaning of Redundancy

Where a person is redundant, his employer cannot be expected to continue the employment (Riches, Allen and Keenan, 2011, p.550). The law in Section 139(1) of the ERA 1996 says that for employees to be regarded as redundant three things had to be shown:

1. The business where the employee works has ceased or is going to cease to exist.
2. The site or section is going to cease to exist.
3. There is no longer a need for the work of that employee, generally or at a particular site.

Under these criteria, one employee, a specific section (or part), or an entire business can close resulting in job losses.

2.3. Amount of Redundancy Payment

It is necessary to ascertain the amount of a week's pay. This amount is whichever is the smaller of the following amounts:

- the employee's weekly wage; or
- the sum of (currently) £430.

The redundancy payment then consists of the total of the following amounts:

- half a week's pay for each complete year during the relevant period for which the employee was aged 21 *and under*;
- one week's pay for each complete year during the relevant period for which the employee was aged between 22 and 40;
- one-and-a-half weeks' pay for each complete year during the relevant period for which the employee was aged 41 or more. (Riches, Allen, and Keenan, 2011, p.552)

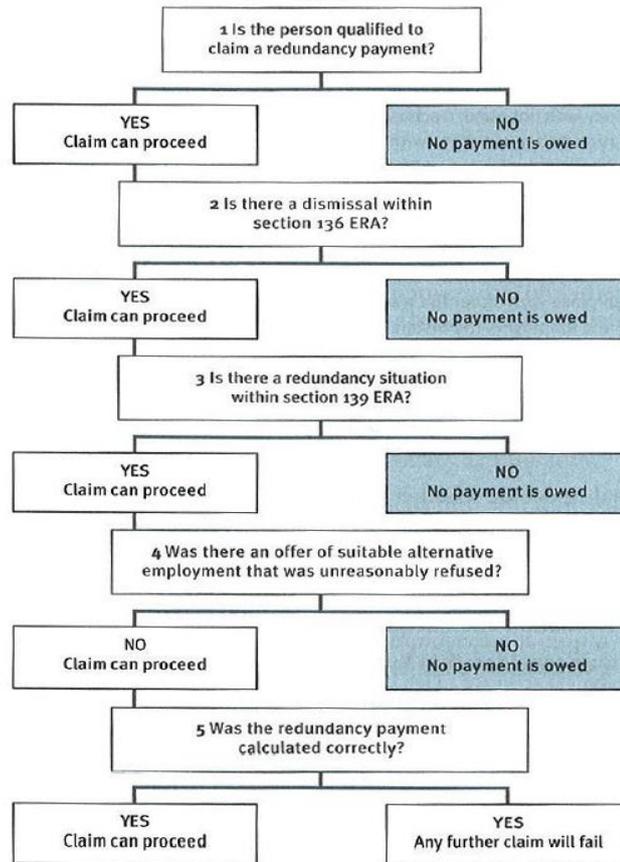
As it's seen from above, the greater age and length of service, the higher redundancy payment (Lewis and Sargeant, 2011, p.119). When it is thought for Wolsey;

Therefore, the company has to pay Adam a high price for redundancy payment.

2.4. Consultation for Collective Redundancy

The obligation to consult about redundancies now arises where the employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less (Painter and Holmes, 2011, p.536). Therefore, Wolsey doesn't require any consultation with trade union representatives.

Figure 4 Redundancy payment flowchart



Source: (Lewis and Sargeant, 2011, p.266)

2.5. Unfair Selection for Redundancy

An employee dismissed for redundancy may complain that he has been unfairly dismissed if he is of the opinion that he has been unfairly selected for redundancy, as where the employer has selected him because he is a member of a trade union or where the employer has disregarded redundancy selection arrangements based, for example, on 'last in, first out'. Ideally, all employers should have proper redundancy agreements on the lines set out in the Department of Work and Pensions booklet, *Dealing with Redundancies*.

There is, since the decision of the Employment Appeal Tribunal in *Williams v Compair Maxam* (1982), an overall standard of fairness also in redundancy arrangements. The standards require the giving of maximum notice; consultation with unions, if any; the taking of the views of more than one person as to who should be dismissed; a requirement to follow any laid down procedure, e.g. last in, first out; and finally, an effort to find the employees concerned alternative employment within the organization (Riches, Allen, and Keenan, 2011, p.545).

3. CONCLUSION AND RECOMMENDATIONS

The law in Section 139(1) of the Employment Rights Act 1996 gives a legal right to Wolsey Engineering Ltd to make relevant employees redundant because its current situation matches up with conditions required for redundancy.

Firstly, Wolsey should declare a redundancy situation by showing that there is a reason for the redundancy and give a notice to redundant employees considering required periods in accordance with statutory provisions of the ERA 1996.

To be avoided from unfair selection claims for redundancy, Wolsey should follow any agreed formula. If there is no agreed procedure for example based on poor work performance or attendance record etc. , Wolsey should decide a specific selection criteria based on its requirements. The company would like to offer Chris an alternative employment in that capacity, instead of making him redundant due to his potential design skill. In this context the company should make an announcement of a vacancy in the design department and would employ one of the relevant redundant employees for a designer position after a skill qualification test. In the result of the skill qualification test, Chris who has been recognized by the company as having the potential to be a gifted designer, will probably get the best score and the company will dismiss the relevant employees fairly on the grounds of redundancy.

Wolsey doesn't have to pay Brenda any redundancy payment because she has not completed at least two years of continuous service in the company (Riches, Allen, and Keenan, 2011, p.551). The company has to pay Adam a high redundancy payment because of his age (60) and the number of service years (20).

Chris should be an alternative employment in that capacity considering his potential design skill. An employee who unreasonably refuses an offer of alternative employment is not entitled to a redundancy payment (section 141 ERA 1996). This new employment shouldn't involve a loss of status otherwise the Employment Appeal Tribunal can decide that Chris is entitled to a redundancy payment (Riches, Allen, and Keenan, 2011, p.552).

The Offer of Alternative Employment:

On the grounds of section 141 ERA 1996, Chris should be offered the alternative employment by a new contract.

- If the provisions of the new or renewed contract as to the capacity and place, together with the other terms and conditions, don't differ from the corresponding terms of the previous contract, or
- If the terms and conditions differ, wholly or in part , but the offer constitutes an offer of suitable employment, and
- If in either case the employee unreasonably refuses that offer,

Therefore Chris will not be entitled to a redundancy payment (Lewis and Sargeant, 2011, p.261). Wolsey should provide sufficient information about suitable alternative employment, including, preferably, written notification as to remuneration to enable Chris to decide whether to accept or reject the new employment(Riches, Allen, and Keenan, 2011, p.553). The suitability of the alternative work must be assessed objectively by comparing the terms on offer with those previously enjoyed. It might be reasonable for Chris to refuse an offer of employment which, although suitable involved loss of status.

To allow Chris to make a rational decision about any alternative employment offered, section 138(3) ERA 1996 states that if the terms and conditions differ, wholly or in part, from those of the previous contract, a trial period may be invoked.

Such a period commences when Chris starts work under the new or renewed contract and ends four calendar weeks later, unless a longer period has been agreed for the purpose of retraining(Lewis and Sargeant, 2011, pp.261-262).

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