

What is redundancy?

The law on redundancy is contained in the Employment Rights Act 1996. The statutory provisions are fleshed out by case law, some of which will be covered in this book.

Let's start with a definition of redundancy. A redundancy occurs where a dismissal is wholly or mainly because the employer has ceased to carry out his business or intends to cease to carry out his business either:

- ✓ for the purposes for which the employee is employed; or
- ✓ in the place where the employee was employed.

Situations where employees can be made redundant include:

- ✓ your business, or part of the business, has stopped operating or has become insolvent;
- ✓ your business is failing;
- ✓ you are moving into a new line of business which no longer needs certain employees's skills;
- ✓ a new system or technology is being introduced which means some jobs are no longer necessary;
- ✓ some jobs no longer exist because the work is being done by other people, following a reorganisation of the workplace;
- ✓ your business, or some of the work done, is moving to another area; and/or
- ✓ your business is being taken over.

Sometimes redundancies arise from the success of a business. For example, you may have grown your business to such an extent you need to move from a basic book keeping function to a full-blown finance director.

A redundancy situation will not necessarily arise where there is only a diminution in an employer's need for particular work to be carried out, rather than a reduction in the number of employees required to do that work.

Learning from life's lessons

Miss Welch was employed by Taxi Owners Association (Grangemouth) Ltd as a radio controller, working 36 hours per week on night shifts. There were seven other radio controllers, including one who also worked nights. In early 2011, because of a downturn in business caused by a new competitor, the company tried to save costs by reducing the number of hours worked by its radio controllers.

The Company initially proposed reducing Miss Welch's hours to 14 per week but, after discussions, amended its proposal to her working 28 hours per week for six weeks, with a commitment to reviewing the situation after that. Miss Welch wanted to be made redundant, and rejected the company's proposal. She resigned on 2nd April 2011, for the reason that the company was seeking to impose a variation to her contractual hours to which she did not consent, and complained that she had been constructively dismissed.

On appeal, the EAT agreed with the tribunal that there was no redundancy situation the key issue in the case had nothing to do with redundancy+but, given Miss Welch's arguments, it dealt with the relevant law. It cited *Safeway Stores plc v Burrell* [1997] as authority that the relevant issue in determining a redundancy situation is whether or not there is a diminution or cessation in the employer's requirement for employees to carry out the work in question, rather than merely a diminution in the work itself. The court also said it found it very difficult+to accept that an employer can, in principle, be in fundamental breach of contract by not dismissing an employee (whether for redundancy or some other reason). Ms Welch's appeal was dismissed.

Welch v Taxi Owners Association (Grangemouth) Ltd [2011].

The EAT's statement of the law in *Welch* follows the unreported case of *Aylward v Glamorgan Holiday Home* [2002] which suggests there must always be a reduction in headcount in order for a redundancy situation to arise and directly conflicts with

the case of *Packman t/a Packman Lucas Associates v Fauchon*. In *Packman*, the President of the EAT held that the tribunal had been correct to find that an employee who was dismissed after refusing to accept reduced hours following a downturn in business was redundant, even though there was no reduction in the overall number of employees required.

HR Headmistress tip

Although the EAT in *Welch* suggested that there will be no redundancy situation where there is only a diminution in work, and not in the number of employees required to carry out that work, be wary of relying on this interpretation in practice. This is partly because the EAT's discussion on what constitutes a redundancy situation was not central to its decision, given that the case turned on whether or not Miss Welch had been constructively dismissed.