

Who counts as 'redundant' for the purposes of collective consultation?

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Where an employer in the UK proposes to dismiss more than 20 employees at one establishment in a period of 90 days, they

must consult on a collective basis. If an employee resigns in response to a substantial change to their working conditions, they can be counted towards the 20-person threshold.

Between 16 and 26 September 2013 Gestora Clubs Dir SL in Spain dismissed 10 employees, including Mr Pujante Rivera. A further 22 employees' contracts were terminated within 90 days of that. One of those terminations was a resignation from an employee who objected to Gestora's unilateral decision to cut her salary by 25%.

Mr Pujante Rivera brought proceedings against Gestora on the basis that they failed to carry out collective redundancy consultation. He argued that the dismissals occurring within 90 days of his own (including the employee who resigned) meant that the threshold for collective consultation (which, in Spain, is 10% of the workforce) was exceeded.

The European Court of Justice agreed with Mr Pujante Rivera. It held that "redundancy" for the purposes of the rules on collective consultation should be construed widely to include the employee who resigned, given that she resigned in response to a change to an essential element of her contract.

Pujante Rivera v Gestora Clubs Dir SL and another (C-422/14)

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