Employees who volunteer for redundancy may be able to say they have been unfairly dismissed

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The decision to make employees redundant is never easy and care needs to be taken to follow a lawful process in order to avoid the risks and costs of potential claims, particularly unfair dismissal. Offering voluntary redundancy can be a useful tool for employers, however, as a recent case highlights, it will not necessarily avoid the risk of an unfair dismissal claim.

What happened in this case?

In this case, Ms White was a part-time receptionist. Ms White was also covering administrative work for her Deputy Manager (who had been on long term sick), but for no extra pay. Ms White submitted a grievance about the failure to pay her an “acting up” allowance.

A few months later, the employer announced that it was going to reduce the number of employees carrying out administrative and reception work. Ms White was provisionally selected for redundancy. However, at around the same time, a full-time receptionist was recruited, whose role included the administrative tasks that Ms White had been temporarily covering, but for which the new full-time receptionist was being paid to fulfil.

Against this backdrop, Ms White requested, and was given, voluntary redundancy. After the termination of her employment, Ms White submitted a claim for unfair dismissal in the Employment Tribunal. She argued that the redundancy process had been a sham (in light of the fact that the company still had a need for someone to perform reception and

administrative tasks). She claimed she had been targeted for redundancy because she had raised a grievance and also because the company preferred full-time to part-time staff.

What was decided?

This claim was initially rejected and struck out by the Employment Tribunal on the basis that Ms White had *requested* voluntary redundancy, meaning, in the Tribunal's view, that her claim had no prospects of success.

On appeal, the Employment Appeal Tribunal reached a different conclusion. Given the background, which had led to Ms White's request for voluntary redundancy (i.e. she believed the entire redundancy process was pre-determined and a sham), the EAT said it should not be assumed that the mere fact that she had requested voluntary redundancy meant that the redundancy was lawful. As such, the case has been remitted to a new Employment Tribunal to decide whether or not Ms White was fairly dismissed.

What does this mean for employers?

This case is a useful reminder that an employee's request for voluntary redundancy does not necessarily insulate an employer from Tribunal claims. Indeed, even where an employee volunteers for redundancy, an employer may want to consider whether offering enhanced terms under a settlement agreement is worth exploring, to limit its legal exposure and to give certainty that a claim will not be brought following termination of employment.

White v H-C One Oval Ltd

BDBF is a law firm based at Bank in the City of London specialising in employment law. If you would like to discuss rights arising in a redundancy situation, or any issues relating to the content of this article, please contact employment lawyer Emily Plosker (emilyplosker@bdbf.co.uk) or

your usual BDBF contact.

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