



Bulletin 131

September 2008

FIRE AND REHIRE

In the case of *Ralph Martindale and Co. Ltd -v- Harris* the EAT looked at the procedure to be followed by employers when rehiring redundant or potentially redundant employees for a new role within their organisation (“fire and rehire”).

In this case, two employees, Mr Harris and Mr Ensor were made redundant but were invited to apply for a position that had been created to replace theirs. Mr Ensor was selected over Mr Harris on the basis of subjective criteria and Mr Harris brought a claim for unfair dismissal.

The Employer argued that since it was recruiting for a new position, this could not be equated with selecting for redundancy, which requires objective criteria, and it was entitled to use subjective criteria if it so wished.

However, this was rejected by the EAT who held that the recruitment for the new position should be viewed as a continuation of the redundancy process and therefore employers are under a duty to ensure that the selection process is objective and dovetails with a fair redundancy selection criteria.

Practical Tip

When “rehiring” redundant or potentially redundant employees for a new role within your organisation, you must ensure that the recruitment selection process is objective, fair and reasonable. Otherwise those who are not retained will still be able to argue that their non-selection was an unfair redundancy selection

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact a member of the Employment Team on 0151 600 3000. If you no longer wish to receive the bulletin please let us know by return email.

This bulletin is for general guidance purposes only and should not be used for any other purpose.

Brabners Chaffe Street is listed in The Sunday Times 100 Best Companies to Work For



Brabners Chaffe Street is a Limited Liability Partnership

LIVERPOOL 0151 600 3000

Horton House, Exchange Flags, Liverpool L2 3YL
Fax: 0151 227 3185
MDX 14118 Liverpool
email: law@brabnerscs.com

MANCHESTER 0161 836 8800

55 King Street, Manchester M2 4LQ
Fax: 0161 836 8801
MDX 14431 Manchester
email: law@brabnerscs.com

PRESTON 01772 823921

7-8 Chapel Street, Preston PR1 8AN
Fax: 01772 201 918
MDX 17118 Preston
email: law@brabnerscs.com