

## REDUNDANCY: APPOINTMENT TO ALTERNATIVE VACANCIES

When selecting employees for dismissal by reason of redundancy, it is a long-established principle that objective criteria must be applied (see *Williams and others v Compair Maxam Limited* [1982] IRLR 83). In the recent case of *Morgan v The Welsh Rugby Union* UKEAT/0314/10, the Employment Appeal Tribunal decided that this principle does not apply when deciding which potentially redundant employee to appoint to an alternative vacancy.

Mr Morgan's post was made redundant during a business reorganisation and he was interviewed with two other candidates for a new post created as a result of the restructure. Although Mr Morgan was seen as capable of doing the job, another candidate was appointed who had impressed the panel more during interview. Mr Morgan claimed he had been unfairly dismissed, because he had better experience and qualifications than the successful candidate and the interview panel had deviated from the agreed interview format.

The EAT upheld the tribunal's decision that Mr Morgan was not unfairly dismissed. It was held that an employer is entitled to undertake a competitive interview process and apply subjective criteria to appoint the candidate it considers best for the job. An employer will, however, need to be able to show that it acted fairly and reasonably in making the decision. In this particular case, the employer was able to show that the selection was made by a well-qualified interview panel, the interviews were broadly the same length and a fair and objective scoring system was used. Whether a dismissal is unfair will be considered using the reasonableness test under section 98(4) of the Employment Rights Act 1996.

It should be noted that potentially redundant employees who are on maternity or adoption leave have the right to be offered a suitable alternative vacancy in priority to other employees affected by the redundancy situation.

### ➤ Practical Tip

Whilst this case demonstrates that employers are permitted to appoint candidates based on a subjective view, ensure that you take steps to demonstrate that you have acted reasonably. This should include the adoption of a consistent interview format and selection criteria which is consistently applied to all candidates.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact: Paul Chamberlain in Manchester on 0161 836 8864, Andrew Cross in Liverpool on 0151 600 3062 or Kevin James in Preston on 01772 229847.

If you no longer wish to receive the bulletin please let us know by return e-mail to [kimberley.malcolm@brabnerscs.com](mailto:kimberley.malcolm@brabnerscs.com)

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

Brabners Chaffe Street is a Limited Liability Partnership



#### LIVERPOOL

Horton House, Exchange Flags, Liverpool L2 3YL  
0151 600 3000

#### MANCHESTER

55 King Street, Manchester M2 4LQ  
0161 836 8800

#### PRESTON

7-8 Chapel Street, Preston PR1 8AN  
01772 823921