

Employment, Pensions & Employee Benefits Unit

COLLECTIVE REDUNDANCIES - WHEN DOES THE OBLIGATION TO CONSULT ARISE? - AWARD OF ALMOST €3 MILLION IN FUJITSU CASE

The decision of the Finnish Supreme Court in the Fujitsu case delivered on 9 March 2010, pursuant to which Fujitsu was ordered to pay almost €3 million to dismissed employees, has relevance for Irish employers, particularly those within an international group.

A preliminary ruling was sought from the European Court of Justice ("ECJ") in this case and in its ruling the ECJ has, for the first time, clarified the point in time at which employers must commence the consultation process with their employees in a collective redundancy scenario, in particular in the context of group companies.

In the Fujitsu case the decision to close the factory in Finland had been made by the board of the parent company before any consultations with the workers had taken place.

The key points to note from the ruling in this case are as follows:

- The obligation to start consultations with employee representatives arises not when an employer plans to take measures as a consequence of which collective redundancies are to be expected but upon the existence of an intention on the part of the employer to make collective redundancies or once the employer makes a strategic or commercial decision compelling it to contemplate or plan for redundancies within a group of companies. The obligation is therefore triggered on the existence of an intention to make collective redundancies.
- Where the prospect of collective redundancies is not directly the choice of the employer but rather of the undertaking controlling the employer – and even though the employer might not have been immediately and properly informed of that decision – the obligation to start consultations arises upon the existence of an intention on the part of the controlling undertaking.
- Consultations with workers representatives can only commence if it is known in which undertaking within a group collective redundancies will be made. Therefore, if a parent company of a group of undertakings adopts decisions likely to have repercussions on the jobs of workers within that group, it is for the subsidiary whose employees might be affected by redundancies in its capacity as their employer to start consultations with the workers representatives. It is therefore extremely important for employers who are part of a multinational group to be conscious of when any obligation to inform or consult may be triggered and that once a decision has been made which contemplates or plans for redundancies affecting the subsidiary in question, consultation must commence.
- It was acknowledged that all of the relevant information required to be furnished to employees/employee representatives may not be available at the commencement of the consultation process. However, the ECJ held that the information could be provided during the consultation process and therefore the time at which consultations were to commence could not be dependant on whether the employer was able to supply the worker representatives with all of the necessary information.



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- Irrespective of whether the collective redundancies were contemplated as a result of the decision of the employer entity or its parent company, it is always the employer which is obliged to start consultations with the worker representatives.
- Finally the ruling confirms that the subsidiary employer should complete the collective consultation process before the parent confirms the final decision to make redundancies.

The issue of employee consultation in the context of redundancy and otherwise is a complex area and employers should seek advice at an early stage.

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