**Redundancy – suitable alternative employment and unreasonable refusal**

 29 MAR 2017

The recent case **of Dunne v Colin & Avril Ltd t/a Card Outlet** is further judicial consideration of this discrete but important point.

The Claimant, Mrs Dunne, worked a 24-hour week as a book-keeper and her employment transferred to the Respondent after her previous employer went into liquidation. Discussions ensued about her position, and an offer of a 16-hour week was made.  Mrs Dunne turned this down as unsuitable for her due to financial reasons.

The Respondent then made a second offer, consisting of 16 hours' work as a book-keeper and a further 8 hours of varied work, which included work in the warehouse.

Mrs Dunne had leukaemia and could not tolerate the cold environment (and, indeed, worked a 3-day week due to her health). Perhaps surprisingly, however, she did not put her health forward as a reason for refusing this new offer. Rather, she stated it was because it was inconsistent with her book-keeping skills and experience and would not be cost effective for the business.

Having turned down this offer, Mrs Dunne was made redundant and did not receive her statutory redundancy payment. This was on the basis that the Respondent considered she had unreasonably refused an offer of suitable alternative employment.

Mrs Dunne raised claims for unfair dismissal and for payment of her statutory redundancy entitlement. The Employment Judge held that because the job offer was "substantially … office based" and Mrs Dunne's pay was going to be the same, it was both a suitable alternative job and the refusal to take it was unreasonable. The dismissal was also held to be fair.

On appeal, the Employment Appeal Tribunal ("EAT") overturned this decision and remitted the case back to the tribunal for further consideration. The EAT noted that the Employment Judge had not fully considered the appropriate tests.

Of particular interest was the EAT stating that – even though it was not raised by Mrs Dunne at the time of the refusal of the alternative offer – that she could rely on her medical condition in evidence at the tribunal as part of the reason for the refusal. It was expressly noted that the burden of proof was on the employer to show that the refusal was unreasonable.

**What does this mean for employers?**

This case, then, is a helpful reminder of the two-part test that an employer must consider when it is contemplating withholding a redundancy payment from the employee on these grounds.

Firstly, is the job a suitable alternative? This will be a factual analysis, focusing primarily on the differences between the roles – salary, hours, location and type of work will all be significant factors.

Only if it is adjudged to be a suitable alternative would the second part of the test be considered – is the refusal of this role unreasonable? As this is to be considered subjectively in light of the employee's circumstances, it is a difficult balancing act for the employer. For example, even a seemingly minor change in working hours could impact child care arrangements and therefore subjectively a refusal of the alternative employment may not be unreasonable. Employers, particularly in light of the EAT's comments, would be wise to explore the employee's reasons for turning down the role before making any decision.

Often employers offer some enhancement to statutory redundancy entitlements. Although it would depend on the terms of the scheme and would require careful consideration, it may be possible to disapply or soften the statutory tests when it comes to entitlement to these enhancements.

Of course, this case does not affect the general requirement of an employer to follow a fair process in redundancy situations, including seeking and highlighting alternative employment opportunities (not limited to suitable alternative employment) to affected employees.