SUMMARY

ECJ 30 April 2015, case C-80/14 (Union of Shop, Distributive and Allied Workers (USDAW) and B. Wilson - v - WW Realisation 1 Ltd in liquidation, Ethel Austin Ltd and Secretary of State for Business, Innovation and Skills), Collective redundancies

Facts

Woolworths and Ethel Austin were companies active in the high street retail sector throughout the UK. They become insolvent, went into administration and dismissed thousands of employees. One of those employees was Ms Wilson. She and her union USDAW sought protective awards' on the basis of the Trade Union and Labour Relations (Consolidation) Act 1992 ('TULCRA'). They alleged that the consultation process provided for in TULCRA had not been followed. That process is based on Directive 98/59 on collective redundancies. The directive defines 'collective redundancies' as "dismissals effected by an employer for one or more reasons not related to the individual workers concerned where, according to the choice of the Member State, the number of redundancies is: (i) either , over a period of 30 days : [.....] at least 30 in establishments normally employing 300 workers or more (ii) or, over a period of 90 days, at least 20, whatever the number of workers normally employed in the establishments in question". The directive allows Member States to introduce legislation that is more favourable to workers.

TULCRA transposes the Directive by obligating employers to inform and consult with employee representatives "where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less". Thus, the UK has elected to apply option (ii) of the Directive. Failure to comply with the information and consultation process entitles the relevant unions and employees to a 'protective award'.

National proceedings

Protective awards were made in favour of those former employees of Woolworths and Ethel Austin who had worked in stores employing 20 or more staff. Approximately 4,500 employees were denied a protective award on the grounds that they had worked in stores with fewer than 20 employees and that each store was to be regarded as a separate 'establishment'. On appeal, the Employment Appeal Tribunal held that a reading of Section 188(1) TULCRA compatible with Directive 98/59 required the deletion of the word 'establishment'. This meant that the said approximately 4,500 former employees were eligible for payment of protective awards. The Secretary of State appealed to the Court of Appeal. It referred questions to the ECJ.

ECJ's findings

In Rockfon (C-449/93) and Athinaiki (C-270/05), the ECJ interpreted the term 'establishment' as a distinct entity, having a certain degree of permanence and stability, which is assigned to perform one or more given tasks and which has a workforce, technical means and a certain organisational structure, but which need not have any legal, economic, financial, administrative or technological autonomy. Where an 'undertaking' [in this case, Woolworths or Ethel Austin, Editor] comprises several entities meeting these criteria [in this case, several stores, Editor], it is the entity to which the redundant workers are assigned to carry out their duties that constitutes the 'establishment' (§ 45-53).
The meaning of 'establishment' in subsection (ii) of Article 1 (I)(a) of the Directive is the same as that of 'establishment' in subsection (i) (§ 54-60).
USDAW and Ms Wilson interpret Article 1(i)(a)(ii) of the Directive as requiring account to be taken of the total number of redundancies across all the establishments of an undertaking. That would significantly increase the number of workers entitled to protection under the Directive. However, it would be contrary to the objective of ensuring comparable protection for workers' rights in all Member States. Moreover, it would entail different costs for employers in different Member States, depending on the manner in which they have transposed the Directive. It follows that the Directive requires that account be taken of the dismissals in each establishment considered separately (§ 61- 68).

Ruling

The term 'establishment' in Article 1(1)(a)(ii) of Council Directive 98/59/ EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies must be interpreted in the same way as the term in Article 1(1)(a)(i) of that Directive.

Article 1(1)(a)(ii) of Directive 98/59 must be interpreted as not precluding national legislation that lays down an obligation to inform and consult workers in the event of the dismissal, within a period of 90 days, of at least 20 workers from a particular establishment of an undertaking, and not where the aggregate number of dismissals across all of the establishment or across some of the establishments of an undertaking over the same period reaches or exceeds the threshold of 20 workers.

Creator: European Court of Justice (ECJ)
Verdict at: 2015-04-30
Case number: C-80/14