

White Paper Conference
When constructing the redundancy selection grid, what weight should you give to soft measures such as attitude and diligence? How you measure them?

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Williams v Compare Maxam Limited [1982]

IRLR 83 EAT

“Whether or not an agreement as to the criteria to be adopted has been agreed with the union, the employer will seek to establish the criteria for selection which so far as possible do not depend solely upon the opinion of the person making the selection but can be objectively checked against such things as attendance record, efficiency at the job, experience, or length of service.”



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The role of the Tribunal

Tribunal can only interfere if the criteria adopted are such that no reasonable employer could have adopted them, or applied them in the way which the employer did.

***Earl of Bradford v Jowett (2)* [1978] IRLR 16**



Diligence as a criterion?

It has been held fair to use “efficiency” as a selection criterion

Farthing v Midland Household Stores Limited [1974] IRLR
354

NB it may be unfair to select a marginally less competent person if his work is generally satisfactory and he has long service.



Diligence as a criterion?

It has been held reasonable to rely on greater experience in certain particular tasks or on certain machines

Abbotts & Standley v Wesson-Glynwed Steels Limited
[1982] IRLR 51



Attitude as a criterion?

An employer was entitled to rely in selecting employees for dismissal on the fact that certain employees remained loyal during industrial action.

Cruikshank v Hobbs [1977] ICR 725



Overall fairness

In a case involving the use of attendance as a selection criterion the EAT pointed out that the employee need not be warned about the consequences of poor attendance as would be necessary in a case of a capability dismissal.

Gray v Shetland Norse Preserving Co Limited [1985]
IRLR 53



Subjective judgement

Objectivity is not regarded as an absolute requirement.

A question of balance:

Graham v ABF Limited [1986] IRLR 90

“Quality of work, efficiency in carrying it out and the attitude of the persons evaluated to their work”

See also *Samsung Electronics (UK) Limited v Monte-de’Cruz* UKEAT/0039/11



Importance of Context

It was deemed fair in the selection of one of five members from a senior executive team for a small brewery in financial difficulties for the directors to select largely on the basis of who they could best afford to lose:

Mitchells of Lancaster (Brewers) v Tattershall
UKEAT/0605/11



Tattershall continued...

Just because criteria of this sort are matters of judgement, it does not mean that they cannot be assessed in a dispassionate or objective way, although inevitably such criteria involve a degree of judgement, in the sense that opinions can differ, possibly sometimes quite markedly as to precisely how the criteria are to be applied, and the extent of which they are satisfied, in any particular case

Mitchells of Lancaster (Brewers) v Tattershall
UKEAT/0605/11



Tattershall continued...

However, that is true of virtually any criterion, other than the most simply criterion, such as length of service or absenteeism record. The concept of a criterion only being invalid if it can be 'scored or assessed' causes us a little concern, as it could be invoked to limit selection procedures to box-ticking exercises.

Mitchells of Lancaster (Brewers) v Tattershall
UKEAT/0605/11



Dangers of objectivity?

Beware of using recruitment tools

Biluan v Mental Health Care (UK) Limited UKEAT/0248/12

Redundancy criteria used:

- 20% for disciplinary record
- 20% for sickness absence
- 60% for competency

A written assessment:

- An interview with set questions
- Verbal group assessment based on problem solving



Dangers of objectivity?

“We appreciate that the [employer] took a lot of trouble over this redundancy selection exercise and put a lot of resources into it, which is in principle to be applauded. But the fact is that it chose an elaborate and HR-driven method which deprived it of the benefit of input from managers and others who actually knew the staff in question, and which by its very elaborateness was liable to be difficult to apply consistently...The goal of avoiding subjectivity and bias is of course desirable but it can come at too high a price.”

Underhill, J para 36



Closing comments

- If the concept is acceptable but the description is not...change the description!
- For 'attitude' use e.g. 'responsiveness to change'
- For 'diligence' use e.g. 'productivity'
- Equality Act 2010 and disability discrimination
- Be prepared to adjust scoring to make up for points lost for known...and knowable...limitations

Questions?





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