

Redundancies and Unfair Dismissal: Does an employer have to consider "Bumping" in redundancy situations?

Published 18 May 2018

In this case, the EAT considered whether employers are required to consider bumping junior employees if the redundant employee has not suggested that it do so.

The facts

Bumping is the process of moving a potentially redundant employee into another role, and making the employee currently performing that role redundant.

Dr Mirab was employed by Mentor Graphics (UK) Limited (Mentor) as a director. He managed a team of six, and part of his remuneration was calculable on the basis of the team's performance against annual sales targets. Due to a reorganisation, it was suggested that his team be reduced. This would make a significant difference to his responsibilities and potentially to his remuneration. He objected, saying that this was an effective demotion to an account manager role, and he was not prepared to become simply an account manager. However, ultimately he accepted the changes and did not (according to the employment tribunal) become an account manager.

A few months later, Dr Mirab was put at risk of redundancy. Mentor entered into consultation with him, inviting him to put forward any ideas he might have for ways of avoiding his redundancy. He was sent the vacancy list, and found nothing suitable on it. After three consultation meetings, his redundancy was confirmed, and he was given notice. His internal appeal was unsuccessful.

Dr Mirab brought a claim of unfair dismissal. One of the considerations for the tribunal was the extent to which Mentor had made efforts to find alternative employment for him: should it have considered moving him to an account manager role? The tribunal said that it might have been possible for Mentor to have considered the possibility of bumping an account manager. However, according to the tribunal, Dr Mirab did not suggest this, and had previously said that he would not be an account manager. The tribunal said that the onus would not have been on Mentor to suggest that Dr Mirab might wish to take a more junior position, but on Dr Mirab. Had he suggested, it, the tribunal held, Mentor would have had to consider the suggestion. Given that he had not done so, the judge said that "I do not think the respondent could have done any more in this respect than they did."

Dr Mirab's claim was unsuccessful, and he appealed to the EAT.

The EAT upheld two grounds of appeal in relation to the tribunal's decision on bumping. It said that the tribunal was wrong to have interpreted existing case law to have created a rule that the employer does not have to consider bumping unless the employee suggests it. In some cases, it might be open to a tribunal to find that it was reasonable of an employer not to consider bumping unless and until it was raised by the employee, but there is no rule that this is always the case. Additionally, in this case, there were indications that Dr Mirab had, in fact, raised the possibility of taking on an account manager's position, and it was therefore perverse of the tribunal to have held that there was no sign that Dr Mirab had offered to do so.

The case was remitted to the employment tribunal to decide whether, on the facts of this case, Mentor should have considered bumping an account manager.

What does this mean for employers?

Case law has already made it clear that there is no general obligation on an employer to consider bumping, but that there may be some circumstances where it would be unreasonable for an employer not to consider doing so. This case reiterates that there may be cases where it might be reasonable for an employer to essentially create a vacancy at the expense of another employee by bumping that employee. Considering, whether there are any obvious candidates for bumping is something employers should take time to consider.

[Dr Mirab v Mentor Graphics UK Limited](#)

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