

A fair approach to redundancy

By Shanika Best

Redundancy is undeniably a topical employment area. In this week's conversation, we will look at the criteria for a legitimate redundancy, the process, and useful steps in accordance with the **Employment Rights Act (ERA)**. Redundancy is defined as a dismissal caused by business closure, downsizing or where a position is no longer required in an organisation.

Let us first unpack the criteria for redundancy as outlined in the ERA. The act notes that dismissal by reason of redundancy should be for one of the following reasons:

1. The employer operations have ceased or intends to cease.

2. The employer operational requirements for a particular kind of work has diminished or are expected to diminish.

This means that an employer should be able to provide empirical evidence to support a redundancy. Some factors that may cause an employer to consider redundancy, include poor economic performance, natural disaster, significant changes to the business' product, service or processes; for example, implementation of new machinery or technology, change in location and business closure, to name a few. These are all plausible reasons for redundancy.

Consultation required

A vital part of the redundancy process is consultation. The act notes that consultation is required where the workforce will be reduced by ten per cent or more. Nevertheless, in instances where the redundancy will affect less than ten per cent of the workforce, consultancy is also useful and



An employer should be able to provide empirical evidence to support a redundancy. (Internet image)

relevant.

The consultation process allows an employer the opportunity to answer questions, clarify information that may be misunderstood, provide feedback and counselling. In addition, the consultation process aids employers in preserving the relationship with remaining employees, leads to reasonability and transparency. Employers should always attempt to meet the requirement to consult where possible, before following through with a redundancy.

The act mentions that consultation should include the proposed method of selecting the employees who will be affected, the method and period for carrying out the redundancy and any measures the employer can take to find alternative employment for the persons affected. This process is envisaged to include meetings, exercises to keep communication open and written correspondence. Consultation is an important part of the redundancy process, and every attempt should be made to

effectively do so.

There are instances where an employer has legitimate concerns around the period of consultation. There are ways to address this, but a six-week payment to satisfy the consultation requirement is not recommended. The six-week consultation period for a redundancy is mandatory and cannot be evaded through payment to the employee.

However, in instances where an employer is unable to meet the six-week consultation period, the act makes provision for consultation with the Chief Labour Officer and outlines the process to be followed. Another alternative is for the consultation and notice period to overlap as well as letting the employee not report for work during the period.

Reapply for vacancies

A quintessential requirement that is often overlooked in the redundancy process, is the opportunity for impacted



Shanika Best (FP)

employees to reapply for vacancies. The act notes that employees who have been made redundant (due to a decrease in business) should have priority in recruitment within six months from the date of the redundancy. This means that following a redundancy, impacted employees should have priority in applying, should circumstances allow.

Notably, given redundancy is a form of termination, severance is payable once the employee has been employed continuously for 104 weeks or more. Where an employee has been made redundant, they should receive severance pay in accordance with the **Severance Payments Act**, holiday pay in accordance with the **Holiday With Pay Act**, a certificate of employment and a termination of services certificate.

Necessary evidence

In conclusion, should an employer be contemplating redundancy, first ensure that the reason meets the criteria and that it can be supported by the necessary evidence. Consultation should be employed in the process and should the business improve within six months, priority in the hiring of employees impacted. Lastly, ensure that everything is documented and present the exiting employee with the required documentation.

Our team at the Barbados Employers' Confederation stands ready to assist employers with labour compliance. Ask about our Red Book: **Guide to Employment Relations And Our Step-by-Step Conducting Discipline Guide**.

Shanika Best is an employment relations advisor at the Barbados Employers' Confederation.