



29 April 2015

## PRESS SUMMARY

**University and College Union (Appellant) v The University of Stirling (Respondent)**  
**(Scotland) [2015] UKSC 26**  
*On appeal from [2014] CS1H 5*

**JUSTICES:** Lady Hale (Deputy President), Lord Wilson, Lord Sumption, Lord Reed, Lord Hughes.

### **BACKGROUND TO THE APPEAL**

Section 188(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) requires that employers which propose to “dismiss as redundant” twenty or more employees at one establishment within a period of 90 days or less have an obligation to consult with the representatives of any employees who may be affected.

In order to deal with a budget deficit in the year 2009-2010 the University of Stirling proposed to make up to 140 of its permanent staff redundant. In accordance with section 188(1) of the 1992 Act, it undertook collective consultation with the relevant trade unions, including the University and College Union (“the Union”). However, it did not consider that it needed to include in the collective consultation process employees who were employed under limited term contracts (“LTCs”) which came to an end during the consultation period. The Union considered that employees on LTCs should have been included on the grounds that they had been dismissed as redundant and brought four test cases in the Employment Tribunal on this basis.

The Employment Tribunal held that the employees in three of the four test cases had been dismissed as redundant for the purpose of the consultation requirement and that the fourth employee had not been dismissed at all. The Employment Appeal Tribunal held that all four of the test case employees had been dismissed, but that none of them had been dismissed as redundant. The Inner House agreed with the Employment Appeal Tribunal.

### **JUDGMENT**

The Supreme Court unanimously allows the Union’s appeal and remits the case to the Employment Tribunal for consideration of the remaining issues.

### **REASONS FOR THE JUDGMENT**

The Court considered that the issue of whether employees on LTCs, whose contracts come to an end within the relevant period have been dismissed as redundant depends upon two questions. The first question was whether the expiry and non-renewal of an LTC amounts to a dismissal for this purpose. It was common ground between the parties that it did [15].

The second question was whether such a dismissal is “for a reason not related to the individual concerned”, which is the statutory definition of dismissal as redundant pursuant to section 195(1) of the 1992 Act. The Court held that it was. The fact that the employee had entered into an LTC could not mean that the dismissal was a reason related to the individual. In passing the 1992 Act, Parliament did not intend to narrow the scope of the consultation duty from situations where business ceased or was reduced. Further, Parliament had specifically legislated in order to encompass situations where employees are dismissed and offered new contracts on different terms. If the terms and conditions of

employees' employment contracts were "reasons related to the individual concerned" then such business rearrangements would not be covered [20].

The context and content of the duty to consult suggest that it is concerned with the needs of the business as a whole. While being on an LTC might be a criterion for selecting employees for dismissal, it is a collective description rather than a reason relating to the individual concerned [21]. Where an LTC comes to an end, the "dismissal" is the failure to offer the employee a new contract. The fact that it was an LTC, or even that the employee agreed to it, cannot by itself be a reason for the non-renewal. The question is whether the reasons for the failure to offer a new contract relate to the individual or to the needs of the business [22]. A reason relates to the individual if it is something to do with him or something he has done. It is to be distinguished from a reason relating to the employer, such as the need to effect change in the business. The coming to an end of an LTC was a reason related to the employer's business, not to the individual concerned [23].

*References in square brackets are to paragraphs in the judgment*

#### **NOTE**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:**

[www.supremecourt.uk/decided-cases/index.html](http://www.supremecourt.uk/decided-cases/index.html)