



Dismissals - what did P&O Ferries get wrong?

9 June 2022

Port Adelaide
Passenger



Introductions

Presenters



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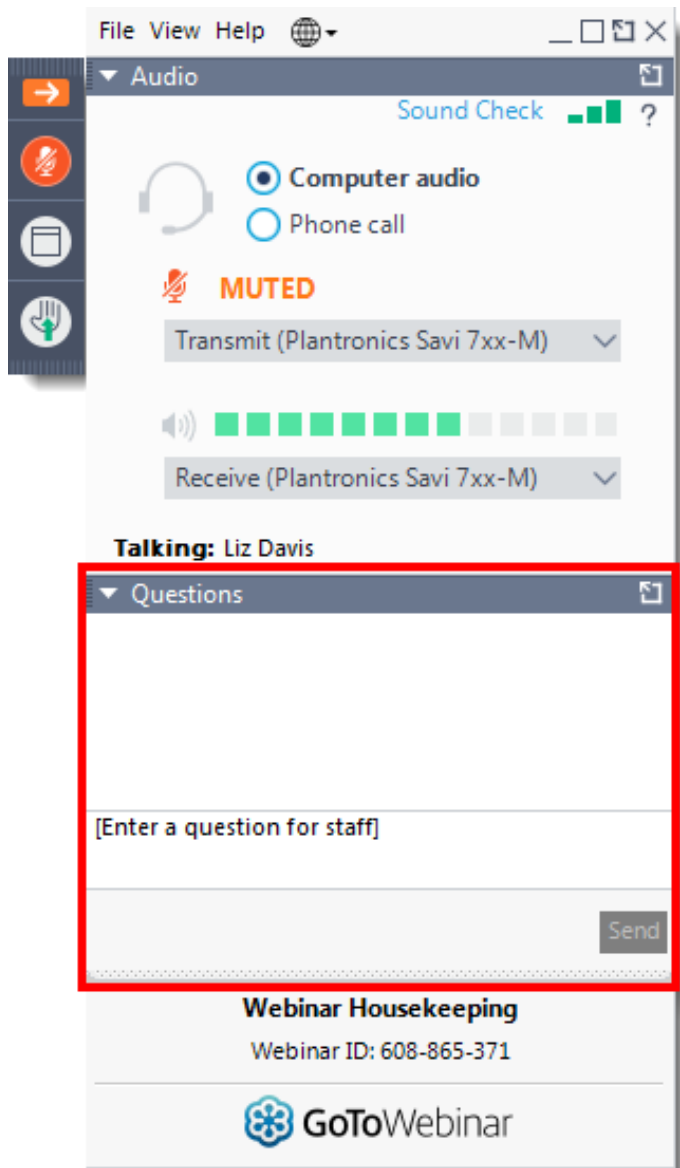




A group of diverse people are seated in a meeting room. In the center, a man with a beard and glasses, wearing a grey cardigan, has his right hand raised. To his left, a woman with long dark hair is looking towards him. To his right, a woman with long blonde hair is also looking towards him. In the background, other people are visible, some looking towards the front of the room. The room has large windows and indoor plants.

How to ask questions

GoToWebinar Housekeeping: Time for Questions



Your Participation

- Please continue to submit your text questions and comments using the Questions panel



Agenda

- What happened
- Jurisdictions
- The issues
- Redundancy dismissals
- Minimum wage
- TUPE
- Employment Tribunal claims
- Q&A



Dismissals – So what did P&O Ferries get wrong?



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What happened?

- 17 March 2022 pre-recorded video played to all 786 employees informing them they had been dismissed with immediate effect
- Dismissal reason stated was on the grounds of redundancy
- New operating model in place using agency workers
- Did P&O know what they were doing was wrong?
- Settlement payments made amounting to more than £36m
 - 40 employees received over £100k
 - Minimum payout £15k

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Jurisdictions

- This webinar considers the steps in the context of UK employment law.
- Employees belonged to the Jersey based subsidiary of P&O Ferries and were not all UK residents
- P&O Ferries generally does not fall within the remit of UK employment legislation but falls under the jurisdiction of maritime laws.....**however...**
- Employment Rights Act 1996 section 199, 7a-c applies in certain circumstances
- Unique and technical case given the various jurisdictions.
- Employment Tribunal case

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The issues

**Genuine
redundancy
dismissals?**

The issues

**Genuine
redundancy
dismissals?**

Consultation

The issues

**Genuine
redundancy
dismissals?**

**Redundancy
pay**

Consultation

The issues

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Consultation

**Notification of
authorities**

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Redundancy Dismissals

1. Was it a genuine redundancy dismissal?

- Did it meet the legal definition?
- “...employer ceases to carry on the business in which the employee was employed/in the place where they were employed”
- “...the needs of the business for employees to carry out work of a particular kind/in the place where the employee was employed cease or diminish”
- Current active tribunal claim indicates an argument of a ‘sham’ redundancy
- Can’t be a genuine redundancy dismissal given the roles remain

Redundancy Dismissals

2. Consultation

- Chose to not consult
- Trade Union and Labour Relations (Consolidation) Act 1992 – section 188 requires the employer to collectively consult where they propose 20+ employees are to be made redundant
- The consultation process must find ways to avoid or reduce the number of redundancies
- The decision on consultation must not be given until consultation has concluded
- Failure to consult results in unfair dismissal claims as well as a penalty of up to 13 weeks pay for failing to consult.



Redundancy Dismissals

3. Redundancy pay?

- A week's pay for statutory redundancy = £571
 - Half a week's pay for each full year under 22 years of age
 - One week's pay between ages 22 and 40 years of age
 - One and half week's pay when 41 + years of age
- They took a decision to knowingly break the law and that it would cost £36 million to compensate employees for ending their employment

Redundancy Dismissals

3. Redundancy pay?

- Legal requirement to pay statutory redundancy pay to employees with 2+ years service at time of dismissal
- P&O Ferries made a financial settlement instead of following normal redundancy pay rules.
 - 2.5 weeks uncapped salary for each year of service
 - 13 weeks pay in lieu of notice
 - 13 weeks pay for failing to consult



Redundancy Dismissals

4. Notification of authorities

- TULRCA requires an employer to notify the secretary of state in writing 45 days in advance of the first proposed redundancy dismissal when 100+ employees are to be made redundant
- Failure to do so is a criminal offence
- [Form HR1](#)

Redundancy Dismissals

4. Notification of authorities

- It is legally challenged whether P&O fully adhered to this obligation
- The Seafarers (Transnational Information and Consultation) Collective Redundancies and Insolvency Miscellaneous Amendments) Regulations 2018
- The duty to inform the Secretary of State transferred to notifying overseas authorities
- Unclear whether the criminal offence of notifying transfers over also.

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Minimum Wage

- Applies to:
 - Those who work offshore sites in the UK territorial waters or on its continental shelf
 - All seafarers on vessels which service UK domestic routes and on UK registered vessels in the UK and non-UK waters (if they are ordinarily resident in the UK)
- The agency workers recruited by P&O Ferries are being paid an hourly rate of £5.15 **but are not** covered by the NMW.
- The Government announced plans for new legislation to allow ports to refuse access to ferries that do not pay their staff the NMW.

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TUPE

- Could TUPE apply (the Transfer of Undertakings Protection of Employment Regulations)?
- TUPE can apply where there is a change in service provision
 - P&O changed their service model by using agency staff to operate the service.
 - Argument that if P&O Ferries are outsourcing roles to a contractor, their employees should have transferred over rather than be dismissed.

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- **Employment Tribunal Claims**
- Q&A

Employment Tribunal Claims

Claim	Why?
Unfair dismissal	<ul style="list-style-type: none">▪ The circumstances in this case do not line up to the legal definition of what constitutes a redundancy situation.▪ Dismissing for redundancy, where there is not a genuine redundancy situation could constitute an unfair dismissal.
Automatic unfair dismissal	<ul style="list-style-type: none">▪ Should the circumstances suggest it was a TUPE situation then the dismissal would be treated as an automatic unfair dismissal.
Wrongful dismissal	<ul style="list-style-type: none">▪ When a dismissal breaches an employee's contractual right it can lead to claims of wrongful dismissal.▪ P&O failed to serve notice
Failure to consult	<ul style="list-style-type: none">▪ A failure to fully consult as is required under the Trade Union and Labour Relations (Consolidation) Act 1992 can result in a financial penalty of up to 13 weeks' pay.

Employment Tribunal Claims

- Mr. John Lansdown claims:
 - He was treated unfavourably as he is British and eligible for the national living wage
 - The redundancy was a 'sham' given that his job is still needed
 - No fair selection process took place
- Complaint of harassment regarding his exit:
 - Forced to leave belongings behind when he was unexpectedly notified of his dismissal
 - Security staff carried handcuffs and wore balaclavas to remove staff who refused
 - P&O Ferries violated his dignity and created an intimidating, hostile, degrading and humiliating environment.

Employment Tribunal Claims

Learnings from P&O Ferries

- Employees and workers in the UK have the right not to be unfairly/wrongfully dismissed (2+ years service) or not to be automatically dismissed (no qualifying service required)
- Legal obligation for meaningful consultation with all employees and in addition, collective consultation when proposing to dismiss 20 + employees on grounds of redundancy
- Legal duty to follow a fair process
- Legal duty to serve notice in line with the contract of employment
- Legal obligation to file paperwork with the UK Government – HR1

Employment Tribunal Claims



Handling redundancy processes require careful handling



All line managers should be trained in employment law, how it impacts upon situations at work, including carrying out a consultation process



Planning and preparation is key for any change programme



Effective communication is vital throughout the process

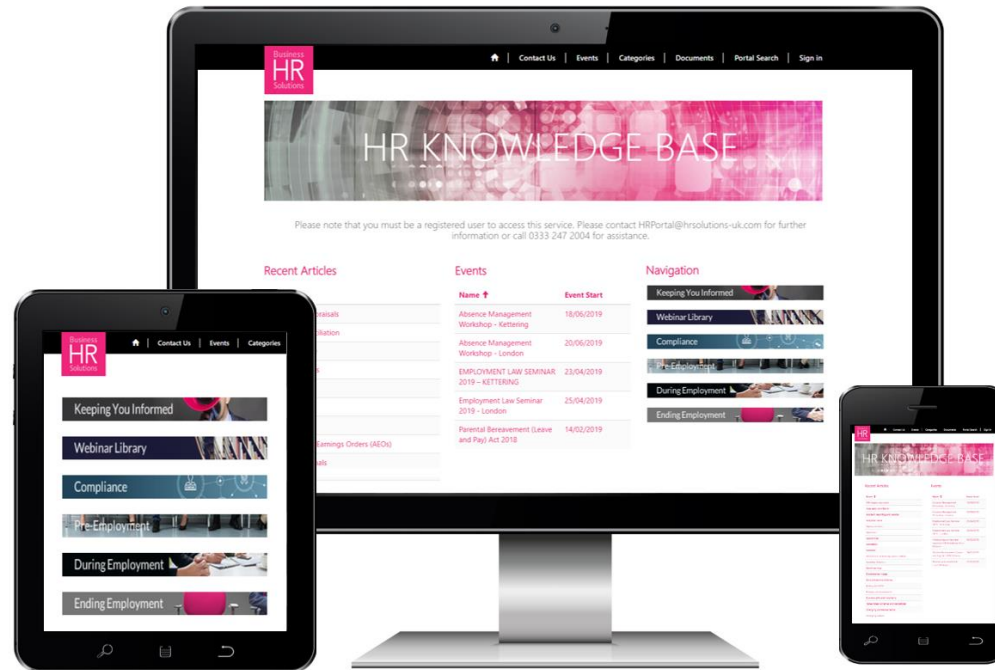






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Subject areas covered include:

- The impact of attitude
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- What makes them difficult?
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- Contracts of Employment
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Fire safety laws

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Further questions?

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FEEDBACK

MATTERS

TO US

After the webinar, we shall be sending a short survey to capture your feedback, it would be appreciated if you could complete this survey so that we can constantly improve.



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