

Redundancy trumps poor performance

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In *Fish v Glen Golf Club*, Mr Fish was the secretary of a golf club. In 2008, he was made redundant as part of an attempt to improve the club's financial position. He disputed his redundancy arguing that the real reason for his dismissal was because the club was critical of his performance.

He relied on the hasty consultation process and the appointment of his deputy to an alternative role as evidence of a sham redundancy. He also cited as evidence the fact that there were two versions of a redundancy report, an edited version (which Mr Fish was shown during consultation) and an earlier unseen version (which was only provided during the litigation process). The earlier version was critical of Mr Fish whereas the edited report omitted these criticisms and was even complimentary.

Notwithstanding this evidence, the Tribunal found that the **principal** reason for Mr Fish's dismissal was redundancy albeit that it was not necessarily the **sole** reason. The criticisms of Mr Fish were background to the dismissal and not the cause of it and therefore the dismissal was fair. Mr Fish appealed this decision on the grounds of perversity. He was unsuccessful as it could not be said that the Tribunal's decision would '*cause astonished gasps from the well informed observer*' which is the high hurdle for proving perversity.

This is a surprising decision and one wonders whether a different Tribunal would have taken the same view. Nonetheless, the case is a firm reminder that a Tribunal will rarely look behind an employer's reasons for making a redundancy and is yet another nail in the coffin for unfair dismissal claims based on redundancy.

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