



**Key Issues:** Collective Redundancies

**Case:** Valerie Lyttle and Others v Bluebird UK Bidco 2 Limited

**Reference:** Case C-182/13, CJEU (Fifth Chamber), 13 May 2015

**Legislation:** Council Directive 1998/59/EC

At the beginning of 2012, Bonmarché operated 394 stores selling women's clothing across the United Kingdom and employed 4000 people. For administrative purposes, Bonmarché regarded its stores in Northern Ireland and its single Isle of Man store as constituting one region ("the Northern Ireland region"). At the beginning of 2012, there were 20 stores in the Northern Ireland region, employing 180 people.

The claimants in the main proceedings were employed by Bonmarché at four different stores. Those stores were situated in different towns, Lurgan, Banbridge, Omagh and Belfast, and each employed fewer than 20 staff. Each store was treated as an "individual cost centre", whose budget was decided on by the head office in Great Britain. It was also the head office that decided on the stock and the sales promotion priorities of each store. Nevertheless, each branch manager could influence the amounts and types of goods provided. The store managers were responsible for achieving the objectives of their respective stores. Within the limits of the budgetary provision allocated to staffing hours, which was decided on centrally, the branch manager had discretion as to the number of full-time and part-time staff who would be employed.

Bonmarché became insolvent and the company was transferred to Bluebird on 20 January 2012. Immediately after that transfer, Bluebird began a business restructuring process entailing the closure of many stores, including those in which the claimants in the main proceedings worked. Following the dismissals effected in 2012 by Bluebird, Bonmarché was left with only 265 stores in the United Kingdom, employing 2 900 staff. The number of stores situated in the Northern Ireland region went from 20 to 8 and the number of staff employed decreased from 180 to 75 employees.

The claimants in the main proceedings were dismissed, together with other employees, on 12 March 2012. The dismissal process was not preceded by any consultation procedure as referred to in Directive 98/59. The claimants brought an action contesting the validity of their dismissals before the referring tribunal.

The Industrial Tribunal (Northern Ireland) considers that it is possible to construe Article 1(1)(a)(ii) of Directive 98/59 as meaning that the figure 20, referred to there, refers to the number of employees within a particular establishment, but that it is also possible to consider that that figure refers to persons dismissed across the employer's entire undertaking. It states that a

purposive interpretation is appropriate in the circumstances and that, according to the judgment in *Rockfon* (C-449/93, EU:C:1995:420), Directive 75/129, which was replaced by Directive 98/59, had to be given an interpretation that would cover the largest possible number of redundancy-related dismissals. In those circumstances, the Tribunal decided to stay the proceedings and to refer a number of questions to the Court of Justice (CJEU) for a preliminary ruling.

### **Consideration by CJEU**

It is apparent from the order for reference and the observations submitted to the CJEU that, when transposing Directive 98/59, the United Kingdom opted for the threshold for its application set out in Article 1(1)(a)(ii) of that directive. Under the applicable national law, where an employer is proposing to shed at least 20 jobs at an establishment within a period of 90 days, he is required to comply with a procedure for informing and consulting workers in connection with that proposal.

It should be stated from the outset in this connection that, in accordance with the case-law of the CJEU, the term “establishment”, which is not defined in Directive 98/59, is a term of EU law and cannot be defined by reference to the laws of the Member States

By the use of the words “distinct entity” and “in the context of an undertaking”, the CJEU has, in previous judgments, clarified that the terms “undertaking” and “establishment” are different and that an establishment normally constitutes a part of an undertaking. That does not, however, preclude the establishment being the same as the undertaking where the undertaking does not have several distinct units. Consequently, according to the case-law of the CJEU, where an “undertaking” comprises several entities, it is the entity to which the workers made redundant are assigned to carry out their duties that constitutes the “establishment” for the purposes of Article 1(1)(a) of Directive 98/59.

In the present case, on the basis of the information available to the CJEU, it appears that each of the stores at issue in the main proceedings is a distinct entity that is ordinarily permanent, entrusted with performing specified tasks, namely the sale of goods, and which has, to that end, several workers, technical means and an organisational structure in that the store is an individual cost centre managed by a manager. Accordingly, such a store is capable of satisfying the criteria set out in the case-law relating to the term ‘establishment’ in Article 1(1)(a) of Directive 98/59; this is, however, a matter for the referring tribunal to establish in the light of the specific circumstances of the dispute in the main proceedings.

The CJEU held that:

- 1. The term ‘establishment’ in Article 1(1)(a)(ii) of Council Directive 98/59/EC must be interpreted in the same way as the term in Article 1(1)(a)(i) of that directive.**
- 2. Article 1(1)(a)(ii) of Directive 98/59 must be interpreted as not precluding national legislation that lays down an obligation to inform and consult workers in the event of the dismissal, within a period of 90 days, of at least 20 workers from a particular establishment of an undertaking, and not where the aggregate number of dismissals**

**across all of the establishments or across some of the establishments of an undertaking over the same period reaches or exceeds the threshold of 20 workers.**

Why is this decision important?

Collective redundancies have been a common feature of the UK economy for a number of years. Where an employer runs its business across a number of locations, care must be taken when selecting employees for redundancy as each location may, itself, be an “establishment” for the purposes of Directive 98/59.

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### **CLfE (11/2015)**

**Elliott Duffy Garrett | Royston House | 34 Upper Queen Street | Belfast | BT1 6FD**

**W:** [www.edglegal.com](http://www.edglegal.com)

**E:** [kevin.mcveigh@edglegal.com](mailto:kevin.mcveigh@edglegal.com)

**T:** +44 (0) 28 9024 5034

**F:** +44 (0) 28 9024 1337