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Lessons from Tech Redundancies

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LESSONS FROM TECH REDUNDANCIES

While it is certainly better that a process exists ... the process is almost entirely useless

INTRODUCTION

The last twelve months have seen considerable retrenchment in staff levels in the technology sector. Described in the first instance as a case of over hiring during covid, it has now turned into a second and third wave of ongoing redundancies. In a sector that is often non-union and with little experience of dealing with wide scale redundancies, the redundancy mechanisms used by the employer has caused untold hardship for workers.

Since October of 2022 over 3,000 workers have lost their jobs in tech in Companies like Stripe, Google, Meta, Indeed, Workhuman, Salesforce, Twitter, Microsoft, Linked In, Accenture and more.

In these cases, where no trade union is recognised, employers established ad hoc Employee Representative committees which is permitted under the 'Protection of Employment Acts, 1977 - 2014' for the purposes of collective redundancy consultation.

The "Act" requires the employer to inform the Minister of the redundancies and consult with Employee Reps with a view to reaching agreement.

It does not require the Employer to engage with a trade union even if its workforce are members of a trade union.

Throughout the redundancy process the FSU provided advice, guidance and strategic support to members and Employee Representatives.

It is important to note that in every case Employee Representatives were dissatisfied with how the consultation process was handled by the Employer.

This paper will focus on the process adopted by the Employer during the thirty-day consultation period and highlight some of the shortcomings of the current legislation. Listening to the direct experiences of seven employee representatives, from a range of Tech employments, this report will make recommendations on how best to improve and modernise the 'Protection of Employment Acts' to create a fairer, transparent, and equal system.

Gareth Murphy

Head of Industrial Relations and Campaigns

EMPLOYEE REPRESENTATIVE EXPERIENCES

Overall, the experience of Employee Representatives during these tech redundancy consultations was a poor one.

This included:

- Poor training provision and the inherent imbalance of resources available to both sides during the process;
- Very short timeframes, employer delay tactics and ending processes too quickly;
- Poor employer engagement but with very little potential repercussions on the employer;
- No dispute resolution procedure where no agreement was reached; and
- A lack of trade union representation allowed when requested by employees.

As one Employee Representative put it:

> *"The legislation places incredibly minimal obligations on the employer, the employer can essentially discard any and all feedback from Reps".*

Staff outlined the mental toll it took on them and the poor experience they had often feeling the power differential that existed between very large and well-resourced Corporations and themselves.

> *"the redundancy collective consultation process was a very difficult and emotionally draining process. As a rep, there is a great weight of responsibility on your shoulders, and you can feel it - especially when the balance of power is so heavily skewed in favour of the employer"*

> *"Not a positive experience. It felt staged. It felt like the business had already made their mind up on who was leaving and retrofitted a process."*

> *"It was very overwhelming. Knowing we were up against a behemoth and their legal team and that we had no clue what we were in for"*

In some cases, Employee Representatives were scathing of their employer's lack of respect for staff and for the gravity and seriousness of redundancy situations and also identified the law as being particulary weak.

> *"I felt the process was conducted in a way that had no respect for how it will impact affected individuals, there was no transparency, communication and it was very hard to get even the expected and required by law information from the company as they tried to obfuscate every step of the process".*

"While it is certainly better that a process exists compared to other territories where people can be fired without any notice or feedback, the process is almost entirely useless as employees and their representatives have no concrete power whatsoever, and the employer can fundamentally do whatever it wants as long as it meets a set of extremely low legal bars."

"The bar for mass redundancies ought be a lot higher".

One Representative told us of their fear of victimisation.

"There was some real anxiety about possible retaliation"

FSU can confirm that a disproportionate number of Representatives were made redundant from these processes as relative to the number of redundancy and staff numbers in their companies. This would seem to lend real support to the fear of victimisation that Reps have.

The paper will now look in more detail at training and resources, the 30 day process, the quality of employer engagement, what if no agreement is reached, union representation and finally what recommendations we can draw from this.

1. EMPLOYEE REPRESENTATIVES TRAINING AND RESOURCES

The lack of adequate training and the imbalance of power between Employee Representatives and Corporations, some of which are financially bigger than some Countries, was an issue that was highlighted again and again.

This power gap also relates to staff concerns over victimisation and their future careers.

"There is no balance of power. The employer controls everything ... Employee representative have no power and also need to be mindful of their future in the company"

"It was obvious that it is only a formality and employees have no power"

The power imbalance clearly left Employee Representatives feeling inadequately resourced to argue on behalf of their colleagues against well-resourced and experienced professionals.

"The balance of power very much lies with the employer. The employer has staff and outside resources whose expertise is to defend the company's plan to make people redundant. The reps, who find themselves thrust into this process (despite being elected), start off with no knowledge of this process and much confusion. It is so hard to go from zero to being a useful representative."

"We had to quickly scramble to do our research and come together as a team. We were also going through the shock of being made redundant. Honestly to make it fair we should have had someone representing us who knew how the process worked and could stand up for us."

In almost each process controversy arose over the election or appointment of Employee Representatives.

- Do they have to be elected?
- How many?
- Is there a required ratio?

Staff wanted more time and greater transparency on this important start to the process and the legislation is surprisingly quiet on this aspect.

"Clear definition on the process of electing the employee representatives. The way it was done was clearly a mockery of any election process. The number of representatives and the way independently validated election process is run needs to be imposed."

"we had 15 minutes to choose the reps. I was selected as a rep but I wasn't even in the meeting as I was on annual leave."

Once in place the issue of training arose with Reps clearly unhappy with:

- the quality of training,
- who arranged the training
- the extent of the training.

It is worth noting these staff have probably never faced anything like this before and they are expected to sit opposite well-seasoned and experienced human resource and business leaders who have had months to prepare for the process.

"we had to learn fast and dedicate ourselves as a group of reps to figuring out how best to represent our colleagues. There was so much to grapple with - legislation, responding to information provided by the company, understanding how to get and give feedback from/to people we represented. It was overwhelming."

"their training appeared selective and designed to disempower the reps and lead the reps to believe that they had no meaningful role to play."

"minimal training was provided by external legal support brought in by the business, and even part of that turned out to be poor advice."

"Minimal training given. The reps, support teams plus external advisors had to put in massive effort to cover gaps in the process."

After minimal or poor training Employee Representatives then realised the even bigger gap in resources that both sides had at their disposal.

Employers with inside legal council as well as often outside legal advice on top of accountants, HR professionals, strategists, PR and crisis management consultants and Employee Representatives, with no funding from the Employer, having to fund themselves, research themselves and represent themselves in the direct discussions without a trade union around the table.

"The independent counsel had to be funded by the employee themselves. This should be a requirement to get the company to pay for that as the advice given was definitely worthwhile and you cannot trust information coming from the employer."

"I've found the necessary information through my own means and research - the company did not provide anything beyond bare basics that were not enough for me to understand and carry myself through the process."

Once again, the lack of mandatory union engagement in Ireland comes to the fore. When workers need it most Employers can still continue to ignore workers trade union and deny workers effective representation.

"The employer has their own solicitors and of course all power. Employees have no legal support. People are afraid to reach out to the union. So, it the labour law were saying that it is mandatory to engage the union, it would be a benefit for employees. Both sides should have their own legal support."

In addition to this, Employee Representatives often have to continue to do their day job in the Company and so are trying to juggle responsibilities.

"once a rep is elected, they should be allowed (and legislatively protected) to work full time in their role as employee reps and be relieved of the duties that they would ordinarily have to carry out as part of their employment."

2. THE 30 DAY PROCESS

The 30-day process is currently designed to allow time for consultation on the following matters:

- Reasons for the proposed redundancies
- Number, and description or categories, of employees whom it is proposed to make redundant
- Number, and description or categories, of employees normally employed
- The period over which it is proposed to implement the redundancies
- The criteria for the selection of workers to be made redundant
- Mitigation against proposed redundancies
- If there is to be a payment other than the statutory redundancy payment, the method of calculating such payment must be set out

An employer cannot serve notice of redundancy to individuals during this consultation period. In one of these cases this did happen, but the Employer used settlement agreements in conjunction with enhanced terms (barely enhanced above Statutory) to effectively nullify workers opportunity to prosecute a case against their employer.

It is fair to say that the experience of Employee Representatives was that employers frustrated the process and wound down the clock in order to get to the end of the 30 days rather than engaging with a view to reaching agreement and in any meaningful way.

"They (information) should also be provided upfront and not doled out over the 30 days period."

"the company was keen to accelerate the clock as quickly as possible. For example, the company was keen to move to individual consultations well before the end of the 30-day period."

"There can even be disagreement as to when the 30-day clock actually starts."

"The company can delay the flow of information to reps, delay meetings and use other means to run down the clock".

"The employer engaged with the group of representatives and hesitantly provided information on the selection process 2 weeks into the consultation and refused to provide individual reasons for the selection".

"It felt like a box-ticking damage limitation exercise. Requests for information were often ignored, as were painstakingly drafted alternative restructuring proposals by the employee reps. Towards the end of the process the company did eventually move slightly towards actual engagement".

"In addition, the business was slow to respond to queries raised to them and while some did get a response, many were left unanswered ... This resulted in a significant amount of lost time during consultation."

One Employee Representative suggested there should be a way to extend the timeframe thus incentivising employers who want a quicker process to engage and try find acceptable solutions.

"An ability for the employees to extend this process - or, at a minimum, to be able to play "injury time" where delays have been introduced by the employer would be helpful."

Unfortunately, Employers can effectively run down the 30 days because they don't have to actually reach agreement and there is no dispute resolution procedure should no agreement be reached.

3. EMPLOYER ENGAGEMENT WITH A VIEW TO REACHING AGREEMENT

It was clear from the experience of Employee Representatives that without an incentive or disincentive to reach agreement Employers did very little to meaningfully engage.

Employee Representatives believed the Employer was only meeting their legal obligation to consult.

"leave a strong suspicion that the name were already chosen and that the process was only there to allow them to fill in the legal obligations that are minimal".

"After we went through the process it felt like the consultation was all fake and just a process they had to follow but had no intention of conceding or changing anything. It was quite disheartening after all the effort we had put in. The only real help we got was from the union."

Another called for a greater incentive for employers to reach agreement.

"A greater incentive for the company to meaningfully engage with the employee reps is needed one way or another".

This is a particularly important point when little is being done to actively avoid redundancies. Often the Employer veers the discussions toward redundancy terms without ever really trying to avoid redundancies, in particular compulsory redundancies.

"There was no discussion on what was done to avoid those job losses and it was presented as a done deal"

A significant reality faced by many tech Reps in these processes is the fact decisions are not being made in Ireland. The final decision is being made in Head Quarters located oversees, often in the US, who don't know or respect the industrial relations norms in Ireland. For example, using voluntary first choices instead of imposing compulsory redundancies, agreeing decent redundancy terms and/or engaging the WRC or Labour Court if needed to resolve a dispute.

"I think the Irish local management genuinely considered them but the central US one did not. And they had the final say in everything."

"However, these individuals were not decision makers in the process, and ultimately all decisions were made by senior leadership in America. At that level the engagement did not seem meaningful, particularly as we were unable to directly engage with the decision makers."

In one particular case a CEO went as far as denigrating Employee Representatives in Ireland on an all-staff global call significantly undermining the process and of course adding to the fear of reprisals and victimisation.

"Worth noting that the CEO was heavily critical of the process on a company-wide call as well. In my view this was designed to undermine the Irish employees in front of their peers, as he fundamentally accused us of greed and blaming us for reputational damage to the company, just for seeking better terms."

4. REACHING AGREEMENT OR NOT

It is clear that engaging with a view to reaching agreement is not a sufficiently strong or robust process for Employee Representatives. Employers are willing to pay lip service to this, wind the clock down and impose largely what they desired in the first instance. It was only through active union campaigns and collective actions that some progress was made.

"The employer sought to impose its will and its redundancy terms on employees. After a lot of re-articulating the viewpoint of the employees by the reps (guided by the advice of the union), the company eventually moved slightly towards reaching an agreement".

In most cases the processes ended without agreement.

"ultimately the consultation period ended without agreement."

And when this happened there was little Employee Representatives could do. Employers repeatedly refused to extend the process and refused to engage in conciliation, mediation, or arbitration. Employers even refused to attend Labour Court hearings and one case ignored a Labour Court Recommendation.

"I would like for it to be crystal clear whom the ultimate arbitrator is - and I would want that to be something like the Work Relations Commission (WRC)."

"most crucially, the employer should be compelled to reach agreement with the employee representatives. If none can be reached, independent arbitration should be mandatory, so the employer cannot just barrel ahead regardless."

A tactic employers now use in redundancy environments is to attach legal agreements to waive the right to pursue any form of case with redundancy terms that are above statutory. Even if the terms are only marginally above statutory it makes it very difficult for workers, or their unions, to vindicate their rights or penalise an employer. We have even seen some of these waiver documents deny workers data request rights under GDPR.

"it is very difficult to have to turn down the enhanced redundancy that an employer may be offering (no matter how small it is) to reserve the right to make a complaint to the WRC."

The lack of fast robust dispute resolution mechanisms allows corporations breach employment rights and get away with bad practices with little consequence.

5. TRADE UNION REPRESENTATION

The position of Employee Representatives was clear. They want their Union to be present and involved in the redundancy discussions and they see the value that trade unions bring to their side of the process.

"I think it is important that bodies that are expert in representing the voice of employees, such as trade unions, play a lead role in training up the employee reps."

"if it had been possible for the union to be more directly part of the process and part of the direct discussions with the employer, then that would have saved a lot of heartache and stress on employee reps."

"The union should be involved from very beginning and talk to the company on employees' behalf."

"Mandatory involvement of union, government body or unaffiliated third-party mediators to balance the power."

"The business refused to engage with any external supports the employee reps had (eg union, legal etc), meaning there were many things we were not equipped to deal with in the room."

"employees were unable to bring union or legal representation, business was able to defer all decisions back to leadership in US."

"Employers should not be permitted to deny the presence of union or legal support on the employees' side, if the employee reps request such."

"As long as employers are continued to refuse to engage with unions and deny people representation in consultations, there isn't much more that can be done."

"They gave us tones of advice that was more helpful than talking to a lawyer and you could see that they have the experience to be able to support us … It should be automatic that a union represents groups made redundant"

In a recent Labour Court Recommendation, on one of these redundancy consultation cases, the Court affirmed that employers should engage with their workers unions and utilise the industrial relations machinery of the State to reach agreement in a timely manner.

"the Court recommends that the parties should engage constructively to address matters raised by the workers through their Trade Union and should commit to utilising the State's institutional dispute resolution framework in good time as necessary to achieve resolution of any disputes arising."

This very reasonable position from the Court is not currently provided for in law meaning employers can, and do, have a veto over this. In this case, the employer continues to ignore this Court outcome.

One Representative reasonably put it as seeking:

Some legal infrastructure that would give us more leverage to actually have a meaningful negotiation. We had no real leverage to ask for anything.

This also, again, highlights the urgent necessity for the Government to legislate for the High-Level Report on Collective Bargaining and also to, separately, work with the Irish Congress of Trade Unions on the maximum and best possible transposition of the EU Directive on Minimum Wages and Collective Bargaining.

RECOMMENDATIONS

After listening attentively to the experiences of Employee Representatives during the 30 day consultation process the FSU, now make the following recommendations to legislators to modernise and improve collective redundancy legislation:

1. The law, or a statutory-based WRC Code of Practice, should provide for a simple effective election process for Employee Representatives with independent verification where a union is not recognised
2. While the consultation is happening Employee Representatives should be full-time released from their jobs in order to fulfil the important role of Employee Rep
3. Trade Unions should be facilitated to train Employee Representatives on site and in person if requested by Employee Reps
4. Legal council for Employee Representatives, of their choosing, must be funded by the employer
5. Trade union representation and attendance at meetings, if requested by Employee Reps, must be mandatory for Employers to facilitate
6. The legislation should provide a non-exhaustive but clearer list of mitigations employer must consider first before moving to any form of redundancy
7. Employers should not be allowed to hire externally while redundancies are happening and should not be able to hire within 12 months of redundancy happening
8. Employers must provide for a voluntary-first process before moving to any potential compulsory notice
9. Employee Reps should have the right to a further 30-day extension of the consultation period where no agreement is reached and before any notice can be given to individuals
10. Where no agreement is reached, and after the 30-day extension, there should be a very clear and mandatory dispute resolution procedure utilising the WRC and/or Labour Court
11. Currently the penalties on employers are minimal and need to be significantly increased in order to disincentives employment law breaches. The penalties need to be significant on the employer for the breach and also greater awards for the employee(s) for pursuing a successful case

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