

THE INDUSTRIAL COURT

THE INFORMATION AND CONSULTATION OF EMPLOYEES REGULATIONS
(NORTHERN IRELAND) 2005

DECISION ON A COMPLAINT UNDER REGULATION 22(1)

Mr J Sheridan

and

Montupet UK Ltd

Background

Mr J Sheridan ('the Complainant'), an Information and Consultation Representative employed by Montupet UK Ltd ('the Employer'), submitted a complaint to the Industrial Court ('the Court') dated 13th April 2007 under regulation 22(1) of the Information and Consultation of Employees Regulations (Northern Ireland) 2005 ('the Regulations') alleging failure on the part of the Employer to comply with the Montupet (UK) Ltd Information and Consultation Agreement ('the Agreement'), dated 30th June 2006, in relation to direct communication with the workforce. The precise terms of the Complainant's complaint were as follows:-

"The Agreement clearly intends that the employees are informed and consulted by the Information and Consultation Representatives in line with the Regulations. On 7/12/06 the Company provided information to the I.C.E. Committee on a number of issues, then called meetings and gave the information directly to the employees. I believe this is a breach of the Agreement."

The Court gave the Complainant and the Employer notice of receipt of the complaint on 16th April 2007. The Employer submitted a response to the Court on 25th April 2007, which was copied to the Complainant.

In accordance with Article 92A of the Industrial Relations (Northern Ireland) Order 1992, the Industrial Court Chairman established a Panel of the Court to deal with the case. The Court consisted of Mr Barry Fitzpatrick, Chairman, and, as Members, Mr Irvine McKay and Mr Jim McCusker. The Case Manager appointed to support the Court was Ms Brenda Slowey, but responsibility subsequently transferred to Mrs Marie Turner, Senior Case Manager.

The Court held an informal meeting with the Parties, that is the Complainant and the Company, in the Wellington Park Hotel, Belfast on 7th June 2007 and after consideration of the issues decided to refer the case to the Labour Relations Agency (LRA) under regulation 36 of the Regulations as it was of the opinion that it was reasonably likely to be settled by conciliation or other assistance provided by the Agency. By letter dated

18th June 2007 both Parties were informed of this decision.¹ According to regulation 35(2), the Court must “as far as reasonably practicable give any person whom it considers has a proper interest in the complaint or application an opportunity to be heard”. In particular, regulation 36(1) provides that ‘interested persons’ must be notified of any reference to the Agency. Interested parties were deemed by the Court, following discussion with the Parties, to be current Information and Consultation Representatives, any previous Information and Consultation Representatives and Negotiating Representatives.

By letter dated 27th July 2007 the LRA referred the matter back to the Court under regulation 36(4) and 5(b) of the Regulations as it was of the opinion that further intervention was unlikely to result in settlement or withdrawal of this case. By letter dated 3rd August 2007 the Court informed the Parties that it would once again be dealing with the complaint.

The Panel met to determine the way forward in relation to the complaint and decided that all parties who had a proper interest in it should be informed of its referral back to the Court from the LRA and, having considered regulation 35(2) of the Regulations, determined that the same interested parties should also be given the opportunity to be heard at any proceedings undertaken by the Court.

A hearing was arranged for Friday 9th November 2007 in Grosvenor House, 5 Glengall Street, Belfast, BT12 5AD. In preparation for the hearing, the Panel met with the Parties on 25th September 2007 for a pre-meeting to clarify a number of issues, to outline the way forward, and to explain procedure at the hearing. Interested parties were also given an opportunity to attend a pre-meeting on the same date but at a different time. Two individuals availed of this opportunity. At the meeting with the interested parties, the Chairman outlined the way forward and how proceedings would be conducted at the hearing on 9th November 2007. All parties were afforded an opportunity to send written submissions to the Court in advance of the hearing. The interested parties who attended the hearing on 9th November 2007 were Mr James Donaghy, Mr Patrick White and Mr Gerard Young.

Relevant provisions of the Agreement

The Introduction to the Agreement states:-

“The aim of this document is to provide an agreement on information and consultation arrangements between the management of Montupet UK Ltd and its Employee Representatives, which satisfies the requirements of the Information and Consultation of Employees Regulations (Northern Ireland) 2005 (the Regulations).”

The Agreement is stated to be based on a series of principles, the third of which is:-

“The information and consultation process will be undertaken with Employee Representatives.”

The Terms of Reference of the Agreement include the following:-

“The Committee will be informed and consulted by the Employer on the situation, structure and the probable development of employment within Montupet UK Ltd. For the purpose of this Agreement, ‘consultation’ means the exchange of views and the establishment of a dialogue between the Employee Representatives and the Employer. The ICE Committee will

¹ See Decision Referring Complaint to the LRA on the Court website www.industrialcourt.gov.uk

be consulted on decisions likely to lead to substantial changes in work organisation within Montupet UK."

It should also be mentioned that paragraph 11 of the Agreement, titled 'Resolving Disputes', states:-

"If there is a dispute between the parties about the meaning of this Agreement and the matter cannot be resolved at meetings of the ICE Committee, a small group (of 4 persons) comprising the Managing Director, the Human Resources Manager and 2 Employee Representatives will meet to use their best endeavours to resolve the dispute. If this small group cannot resolve the dispute, the dispute will be referred to the Labour Relations Agency for assistance in resolving the matter."

Issues Arising from the Complaint

It was agreed between the Parties, and the panel is satisfied, that the complaint concerns direct communication of information between the company and the workforce and not direct consultation with the workforce. It was also agreed, and the panel is satisfied, that the complaint does not concern any alleged failure by the company to invoke the dispute resolution procedure referred to in paragraph 11 of the Agreement. It was also accepted by the Parties, and the panel is satisfied, that at least one element of the company's Business Plan for 2007, namely the Top Class Manufacturing Team (known as 'TCT') initiative, was within the remit of the I.C.E. Committee and therefore a proper subject of information and consultation with the workforce.

It was also agreed that the complaint raised issues of direct information with the workforce in circumstances in which an I.C.E. Committee had been established under a negotiated agreement in accordance with regulation 16(1)(f)(i) of the Regulations.

During the course of its consideration of the complaint, the Court has taken into account the duty of co-operation in regulation 21 of the 2005 Regulations. Regulation 21 provides:-

"The parties are under a duty, when negotiating or implementing a negotiated agreement or when implementing the standard information and consultation provisions, to work in a spirit of co-operation and with due regard for the reciprocal rights and obligations, taking into account the interests of both the undertaking and the employees." This duty is reflected in the fourth principle on which the Agreement is based.

More generally, it has also borne in mind that the Regulations transpose into Northern Irish law the Information and Consultation Directive 2002.

At the preliminary meeting with the Parties on 25th September 2007, a range of issues was suggested to the Parties as a guide for consideration of the complaint. These issues were:-

1. In each case, does this negotiated agreement, in the context of the Regulations and the Directive,
 - a) not permit direct information and consultation at all;
 - b) permit direct information and consultation if agreed between the employer and the employee representatives; or
 - c) permit direct information and consultation at the unilateral initiation of the employer, and, if so, in what circumstances?

2. Is the answer to these questions any different if the direct information and consultation includes:
 - a) only the provision of information to employees; or
 - b) consultation with employees on the information provided?

Factual Background

The question of information and consultation on the Company's 2007 Business Plan was raised at an I.C.E. Committee meeting on 7th December 2006. The Business Plan was presented to the Committee at that meeting. Under 'any other business', the Complainant, who was Secretary to the Committee, indicated that the I.C.E. Representatives should have the opportunity of consulting with the workforce. At a number of informal meetings following this meeting, certain proposals were put to Mr McMichael, HR Manager, by the Complainant as to how this consultation should take place. It was suggested that the full Powerpoint presentation of the Business Plan should be attached to employees' payslips but this was considered impracticable by the Employer due to the size of the document. The Employer suggested a one page sheet summarising the content of the Business Plan but this suggestion proved unsatisfactory to the Complainant.

It was eventually agreed that I.C.E. Representatives should attend weekly information briefings so that they could discuss the Business Plan with employees. According to the minutes of a further meeting of the I.C.E. Committee held on 29th January 2007, a meeting was held on 17th January between Mr Sheridan and Mr McMichael, at which Mr Donaghy, another I.C.E. representative, attended, at which this arrangement was discussed. These minutes were corrected on a minor point in the minutes of the I.C.E. Committee held on 26th February. However, they were not corrected on the issue of the date of this meeting and we are satisfied that the meeting, to discuss attendance at weekly information briefings, did occur on that date.

It is also clear from the minutes of the meeting of 29th January that the Employer commenced Business Plan presentations throughout the workforce from 15th-24th January. It is the essence of the complaint that the Employer was in breach of the Agreement by conducting the Business Plan presentations instead of leaving communication with the workforce to the I.C.E. Representatives. On 18th January, the Complainant made his complaint to Mr McMichael and the I.C.E. Committee meeting of 29th January was arranged.

Submissions of the Parties

In light of the agreement between the Parties that the complaint only concerned direct information and not direct consultation with the workforce, the issues already posed to the Parties can be adapted as follows to concentrate on direct information with the workforce.

- '1) In each case, does this negotiated agreement, in the context of the Regulations and the Directive,
- a) not permit direct information at all;
 - b) permit direct information if agreed between the employer and the employee representatives; or
 - c) permit direct information at the unilateral initiation of the employer, and, if so, in what circumstances?'

The Complainant submits that regulation 16(1)(f) of the 2005 Regulations presupposes a choice between the election of I.C.E. representatives under regulation 16(1)(f)(i) and direct information and consultation with the workforce under regulation 16(1)(f)(ii). Hence the Employer was not at liberty to communicate directly with the workforce on matters which were subject to consultation through the I.C.E. Committee. He considers that there was not any discussion at the I.C.E. Committee on consultation arrangements as the representatives considered that it was up to them to make these arrangements. He does not consider that there are any circumstances in which the Company can unilaterally communicate with the workforce on I.C.E. Committee business. He also considers that the Business Plan presentations weakened the position of the I.C.E. representatives in their consultation with the workforce through the weekly information briefings.

The Employer considers the I.C.E. Committee should strengthen existing arrangements for communication with the workforce rather than replace them. It considers that it is free under the Agreement to engage in direct communication with the workforce, particularly in light of the 16th recital of the Preamble of the Directive which provides, "*This Directive is without prejudice to those systems which provide for the direct involvement of employees, as long as they are always free to exercise the right to be informed and consulted through their representatives.*" The issue for the Employer is whether it obstructed the consultation between the I.C.E. Representatives and the workforce. It was generally agreed that I.C.E. representatives should attend weekly information briefings because of the impracticality of alternative methods of consultation.

According to the Employer, the Business Plan presentations which it initiated in January 2007 were a repetition of presentations on its Business Plan which had been provided in previous years. The Employer considered that these sessions might well have enhanced the I.C.E. representatives' consultations with the workforce. It did not consider reaching agreement within the Committee on these presentations as the I.C.E. Representatives were themselves making their own arrangements to consult the workforce.

Conclusions

The Court is satisfied that the Employer was not in breach of the Agreement in the circumstances of this complaint. The Employer did not obstruct consultations between I.C.E. Representatives and the workforce and did its best to facilitate these arrangements. The Court is satisfied that, in the circumstances in which the Employer was repeating previous practice of direct communication with the workforce on its Business Plan, such communication is permissible under the Agreement. In any event, although the complaint only concerns direct communication with the workforce, the Court is also satisfied that, despite opportunities for questions and answers at the end of these presentations, this could not be construed as direct consultation with the workforce.

The Court notes that the Committee was established in June 2006 and that this was one of the first controversies on information and consultation within the remit of the Committee. It considers, once it became apparent at the meeting of 7th December that consultation of the workforce should take place, that it would have been preferable if the I.C.E. Committee had been reconvened, so that both the Employer and the I.C.E. Representatives could discuss proposed consultation arrangements and so that the Employer could have explained its intentions as to presentations on the Business Plan.

Decision

The Court, having considered the circumstances surrounding this complaint, is satisfied that it is not well-founded.

Barry Fitzpatrick

Mr Barry Fitzpatrick
Mr Irvine McKay
Mr Jim McCusker

13th February 2008

Appendix

Names of those who attended the hearing

EMPLOYEES' REPRESENTATIVES:

Mr Joe Sheridan - Complainant

EMPLOYER'S REPRESENTATIVES:

Mr John McMichael - HR Manager, Montupet UK Ltd

Mr Ian Carroll - Deputy Director, Engineering Employers' Federation

INTERESTED PARTIES:

Mr James Donaghy - Information & Consultation Representative, Montupet UK Ltd

Mr Patrick White - Negotiating Representative, Montupet UK Ltd

Mr Gerard Young - Information & Consultation Representative, Montupet UK Ltd