REDUNDANCY PAYMENTS IN THE UNITED KINGDOM

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During the period 1963-67 there has been in the United Kingdom an unusual amount of legislation in the sphere of labour law. Among the enactments may be numbered the Contracts of Employment Act 1963, the Trade Union (Amalgamations) Act 1964, the National Insurance (Industrial Injuries) Act 1965, and the Trade Disputes Act 1965. Not the least important of the recent enactments is the Redundancy Payments Act 1965; and in view of the fact that automation, whether in factories, on farms, or in offices, is likely to increase the incidence of redundancy among employees in New Zealand as in other countries during the next twenty years, creating problems with which management, trade unions, and Government will be concerned, it is proposed in this paper to consider the general policy underlying the United Kingdom Redundancy Payments Act, and to examine its principal provisions.

General Policy of the Act

Introducing the Second Reading of the Redundancy Payments Bill in the House of Commons, the Minister of Labour[1] conceded that the ideas underlying the proposed legislation were not novel, for they had been discussed by the previous Conservative Government and some voluntary redundancy schemes were already in operation. He added:

> I have said that the basic idea behind the Bill is not new, but, nevertheless, I am quite sure that the introduction of a universal scheme of this kind is a landmark of the first importance in the evolution of our industrial society. It marks a very significant step forward in the way we think about the status of the industrial worker.[2]

The Minister explained that the Bill should be seen in the context of the Government's general programme to modernise industry with the co-operation of both workers and management. The modernisation of industry requires in some sectors the re-deployment of manpower; and the provision for compensation in the event of redundancy was aimed at least in part at overcoming the resistance of trade unions and workers to new methods and economic change.

It might be suggested that the provision of adequate, wage-related unemployment benefits would give satisfactory relief to the problems arising from redundancy, and with reference to this the Ministerial argument was as follows:

> It is also, I think, fair to say that if our object is to encourage mobility of labour by reducing resistance to change, then redundancy pay based on length of service bears more directly on the problem in some ways than improvements in unemployment benefit. It offers substantial compensation to those workers who have most to lose through change of job and who will therefore naturally be most opposed to change.[3]

The contention that redundancy pay based on length of service reduces resistance to change and encourages mobility of labour, is not, it is submitted, absolutely compelling. Certainly it is arguable that the payment of compensation may reconcile both workers and trade unions to the dismissal of labour which is surplus to an industry's requirements, whereas in the past compromises involving work-sharing have not been uncommon. But the scheme may discourage mobility of

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1. Rt. Hon. R.J. Gunter, M.P.
2. Hansard, House of Commons, vol. 711, col. 35.
3. Hansard, House of Commons, vol. 711, col. 37.

labour insofar as workers who voluntarily change jobs will thereby sacrifice their vested rights to redundancy payments.

So far as the managerial side of industry is concerned, the Minister emphasized that manpower is a country's most precious resource, and that it is desirable that management should give as much attention to the forward planning of manpower needs as to the planning of investment and marketing. The redundancy payments scheme would have the effect both of making employers more cautious in their recruitment of labour, and of creating the industrial conditions in which they could discard manpower which proved surplus to their requirements.

In addition to the economic reasons forwarded in support of the legislation, it is today arguable that a worker has some 'rights' in his job, and that as a matter of elementary justice he ought to be compensated if he is deprived of those 'rights' by circumstances outside his control. The Redundancy Payments Act 1965 is socially significant in that it is in part based on the presupposition that a worker has 'rights' in his job, and that those 'rights' increase in value with the years. The Minister explained:

> The purpose of redundancy pay is to compensate a worker for loss of job, irrespective of whether that leads to any unemployment. It is to compensate him for the loss of security, possible loss of earnings and fringe benefits, and the uncertainty and anxiety of change of job. These things may all be present even if a man gets a fresh job immediately.[4]

The statutory recognition of the principle that a worker has a 'right' in his job and is entitled to compensation in the event of redundancy, requires, in the United Kingdom at least, a radical change of attitude to the status of the industrial worker. Professor Wedderburn has remarked:

> The idea that a worker has some 'property' in the job - or even some 'property' in a job, as it is sometimes expressed by those concerned about mobility of labour force - is a novel conception which is bound to impinge upon established conceptions both of society and of management.[5]

It will be clear that two distinct policy considerations underlie the Redundancy Payments Act 1965. First, it is recognised that the economic interest of the nation requires that its manpower shall be efficiently utilised. The over-manning of particular industries impairs efficiency, and it is necessary to create industrial conditions in which the mobility of labour is encouraged. Secondly, it is deemed desirable to accord to the worker in relation to his job a higher status than he has formerly enjoyed. It is now recognised that a worker has some 'rights' in his job just as his employer has certain 'rights' in his property. In the long-term analysis the introduction into labour law of the principle that a worker has some 'property' interest in his job may be the most significant effect of the Act.

Conditions of Entitlement and Scale of Payment

The basic condition for entitlement to redundancy pay is that the employee has been continuously employed for a minimum period of one hundred and four weeks ending with the date on which his dismissal on account of redundancy took effect,[6] excluding any period of employ-

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4. Hansard, House of Commons, vol. 711, col. 36.
5. The Worker and the Law, p. 95.
6. Ss. 1(1), 8(1).

ment before the employee was eighteen years of age.[7] It is significant to note in this connexion that strikes do not break the continuity of employment, but if in any week an employee takes part in a strike that week does not count in computing the period of employment.[8] This provision, which was criticised during the Second Reading of the Bill, was defended by the Minister of Labour on the ground that "it would be particularly inappropriate to reduce rights to redundancy pay because of strike action, bearing in mind that these rights may have been built up through loyal service over 20 years and more."[9]

Certain classes of workers are excluded from entitlement under the scheme. For instance, male employees who have attained sixty-five years of age, and female employees who have attained sixty years, at the time when the dismissal takes effect are not entitled to redundancy payments.[10] The reasons for this exclusion appear to be first, that persons of the ages specified have passed the minimum ages for State pension. Secondly, as the object of redundancy pay is to compensate workers who lose jobs which they might reasonably have expected to continue, such compensation is inappropriate where elderly persons are concerned, since they cannot have the same expectation of continued employment as younger workers. Where the employer is the husband or wife of the employee no redundancy payment may be made;[11] and, although domestic servants are in principle covered by the scheme, they are not entitled to payments in respect of employment where they are in any of certain specified relationships to the employer.[12] Crown servants are excluded,[13] as are dock workers[14] and employees of certain other statutory public bodies.[15] There is also provision under the Act for the exclusion of any right to redundancy payment in the case of contracts for fixed terms of two years or more.[16]

By s. 11, the Minister is given power to exclude from the operation of the Act employees in respect of whom there is an agreement between employers, or organisations of employers, and trade unions representing employees, by virtue of which employees will have a right to payment on termination of their contracts of employment. This provision is intended to open the way for the formulation of practicable arrangements between employers and trade unions in industries such as construction and shipbuilding where the nature of the work makes it difficult for the employer to give continuous employment to all of his employees for long periods.

The scale of payment is set out in the first Schedule to the Act. For years of service between ages 18 and 21, the scale of payment is half a week's pay for each year of employment.[17] For years between ages 21 and 40, the scale is one week's pay for each year;[18] and for years over age 40, the rate is one and a half weeks' pay per year.[19] The Minister justified the higher rate of payment to older workers on the ground that industrial experience has shown over recent years that older men have more to lose in the event of redundancy insofar as they have greater difficulty in finding fresh employment than younger workers. The maximum period of employment to be taken into account is 20 years, calculated by reckoning backwards from the date

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7. S. 8(1).
8. S. 37.
9. Hansard, House of Commons, vol. 711, col. 52.
10. S. 2(1).
11. S. 16(3).
12. S. 19.
13. S. 16(4).
14. S. 16(1).
15. S. 16(4).
16. S. 15.
17. Schedule 1 para. 2(c).
18. Schedule 1 para. 2(b).
19. Schedule 1 para. 2(a).

of dismissal.[20] Thus, a person who has been continuously employed for the purposes of the Act for 20 years since he has attained the age of 40 will be entitled to payment in the event of redundancy to a sum equal to 30 weeks' pay. The amount of the week's pay by reference to which the redundancy payment is calculated is taken to be the minimum sum to which the employee would have been entitled in the week ending on the date when his dismissal took effect.[21] The maximum weekly earnings to be taken into account for the purpose of calculating the amount payable are not to exceed £40.[22] The overall result of these provisions is that the maximum sum to which any worker can be entitled in the event of redundancy is £1,200. Such payment is not assessable to tax,[23] and it does not affect the recipient's entitlement to unemployment benefit. Commenting on the scale of payment the Minister said:

> I am sure it is right that the scale of payments under the Bill should be generous, if the scheme is to do justice to redundant workers and if it is to make the necessary impact on the attitude of workers towards economic and technological change. At the same time, of course, the Bill only lays down minimum requirements and it will be open to employers to improve on these.[24]

Redundancy, pension, and superannuation schemes operated voluntarily by employers would necessarily be discouraged if entitlement under the statutory scheme was additional to any other claim to benefit. Consequently the Minister of Labour is empowered[25] to make regulations excluding or reducing the amount of any redundancy payment in cases where an employee is legally or otherwise entitled to the benefit of a periodical payment or lump sum by way of pension, gratuity, or superannuation allowance on termination of his employment. In practice, therefore, the Redundancy Payments Act is to be regarded as 'normative' in that it establishes minimum conditions, leaving industry free to provide more generous terms.

Meaning of 'Redundancy'

The 1965 Act does not set up a general system of severance payments; it is limited to cases where employees are dismissed by reason of redundancy. It is, therefore, important to determine in what circumstances an employee will be regarded as redundant for the purposes of the Act. Section 1(2) states:

> For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is attributable wholly or mainly to -
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> (a) the fact that his employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed by him, or has ceased, or intends to cease, to carry on that business in the place where the employee was so employed,
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> or
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> (b) the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where he was so employed, have ceased or diminished or are expected to cease or diminish.

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20. Schedule 1 para. 3.
21. Schedule 1 para. 5(1)
22. Schedule 1 para. 5(3)
23. Finance Act 1966, s. 38.
24. Hansard, House of Commons, vol. 711, col. 41.
25. S. 14.

Generally speaking, one may say that an employee will be treated as redundant for the purposes of the Act where he is no longer required for the work on which he has formerly been employed. This state of affairs may come about for a variety of reasons. There may be a change in methods of production, or the business may be closed or transferred to another locality. Vicissitudes in economic conditions may result in a fall in demand for a product. It is expressly provided[26] that where as a result of the death of his employer an employee ceases to be required in his former employment he will be regarded as redundant.

It is evident that the concept of redundancy is fundamental to the operation of the scheme, and many of the cases which have arisen since the Act came into force have been concerned with the question whether or not the dismissal of an employee was due to redundancy. For instance, in North Riding Garages, Ltd. v. Butterwick[27] the respondent had been employed at a garage for thirty years, at the end of that time having the status of workshop manager in charge of a repairs workshop. In January 1966 he was dismissed, the reasons given by the appellants being his inefficiency and incompetence. It appeared that the respondent had been slow in dealing with jobs; that as a result of inadequate supervision there had been inefficiency in the repairs workshop; that there had been faulty costing; and that the respondent had been incompetent in dealing with a new system of job cards which had been introduced by the appellants. On appeal from a decision of the Industrial Tribunal, it was held that the respondent was not entitled to a redundancy payment. The reasoning of the Court is instructive:

> If the requirement of the business for employees to carry out work of a particular kind increases or remains constant, no redundancy payment can be claimed by an employee, in work of that kind, whose dismissal is attributable to personal deficiencies which prevent him from satisfying his employer. The very fact of dismissal shows that the employee's services are no longer required by his employer and that he may, in a popular sense, be said to have become redundant; but if the dismissal was attributable to age, physical disability or inability to meet his employer's standards, he was not dismissed on account of redundancy within the meaning of the Act. For the purpose of the Act, an employee who remains in the same kind of work is expected to adapt himself to new methods and techniques, and cannot complain if his employer insists on higher standards of efficiency than those previously required; but if new methods alter the nature of the work required to be done, it may follow that no requirement remains for employees to do work of the particular kind which has been superseded and that they are truly redundant. Thus, if a motor manufacturer decides to use plastics instead of wood in the bodywork of his cars and dismisses his woodworkers, they may well be entitled to redundancy payments on the footing that their dismissal is attributable to a cessation of the requirements of the business for employees to carry out work of a particular kind, namely, woodworking.[28]

The distinction drawn by the Court between cases where the nature of the employment remains substantially the same despite the introduction of new methods, and cases where the innovations alter the nature of the work required to be done, although acceptable in principle, is likely to give rise to difficulty in application. The decision also casts doubt upon the validity of an earlier determination of the Industrial Tribunal in Loudon v. Crimpy Crisps Ltd.[29]

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26. S. 23.
27. [1967] 2 Q.B. 56, [1967] 1 All E.R. 644.
28. Ibid. per Widgery J. at p.63, 647.
29. [1966] 1 I.T.R. 307.

There the employers had introduced new machines for packing potato crisps. These operated at a faster speed than the type of machine formerly used, and required greater manual dexterity on the part of the operatives. The applicant was dismissed because her employers considered her unsuited to operate the new type of machine, and on these facts the Tribunal held that the applicant was entitled to a redundancy payment. In the light of the decision in North Riding Garages, Ltd. v. Butterwick[30], however, it appears that this was a case where the employee had simply failed to adapt herself to new methods, and not a case where there had been a substantial alteration in the nature of the work required to be done.

Since the proposition is established that an employee who is dismissed because he fails to adapt himself to new methods is not redundant for the purposes of the Act, a fortiori an employee who is dismissed on grounds of inefficiency and incompetence where there has been no change of methods is not entitled to a redundancy payment. This was the position in Mackenzie v. William Paton, Ltd.,[31] where the Industrial Tribunal held that an unqualified cost accountant, who was dismissed and replaced by a more experienced and qualified cost accountant because his employers considered him unable satisfactorily to undertake the work normally expected of a cost accountant, was dismissed for reasons other than redundancy.

A similar problem arises where the requirements of the work remain constant but the employee by reason of advancing age or ill-health is not able efficiently to discharge his duties. For instance, in Ross v. Alexander Campbell & Co. Ltd.[32] the applicant, who had been employed as a storeman and porter, began to suffer from high blood pressure which rendered him unfit for heavy portering duties. He was dismissed by his employers because of his incapacity to carry out his duties. In these circumstances the Tribunal held that the applicant was not entitled to a redundancy payment.

If an employee who is dismissed on grounds of incompetence, inefficiency, or failure to adapt himself to new methods is not entitled to severance payment since he is not redundant, it is not surprising to find that an employee who has so conducted himself as to warrant summary dismissal is excluded from the benefits of the scheme. This is, indeed, expressly stated in the Act.[33] The reason for the inclusion of this provision is obscure, since it was not considered necessary expressly to state that an employee dismissed for some cause, such as ill-health or incompetence, which does not justify summary dismissal is not entitled to a redundancy payment.

Offer of Suitable Alternative Employment

It has so far been noted that certain classes of persons are categorically excluded from entitlement to redundancy payments, such as male employees over 65 years, Crown servants, and employees of certain statutory bodies. It has also been shown that no redundancy payment can be claimed in cases where an employee is dismissed for reasons other than redundancy, such as inefficiency or misconduct. In addition to these instances of exclusion, the Act provides that an employee shall not be entitled to a redundancy payment if the employer has offered to renew his contract of employment, or to re-engage him under a new contract, the terms and conditions of the offer corresponding to those of the original contract, and the employee has unreasonably refused the offer.[34]

Similarly, an employee will not be entitled to redundancy pay if

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30. Supra.
31. [1966] 1 I.T.R. 507.
32. [1966] 1 I.T.R. 189.
33. S. 2(2).
34. S. 2(3)

before the dismissal takes effect the employer makes an offer in writing to renew the contract, or to re-engage him under a new contract, the terms and conditions of the offer differing from those of the original contract but constituting an offer of suitable employment in relation to the employee, and the employee has unreasonably refused the offer.[35] The total effect of these provisions may be summarized by saying that where the employer has offered the employee suitable alternative employment, and that offer has been unreasonably rejected, no redundancy payment can be claimed.

The Tribunal has been much exercised in determining the meaning of 'suitable employment' and 'unreasonably refused'. Since it must be shown that the employment offered was suitable and that the refusal was unreasonable, it follows that an employee will be entitled to redundancy pay where he has reasonably refused an offer of suitable alternative employment. It has been judicially stated that "suitability of employment is an objective matter, and includes questions of status and sickness benefit, which if substantial enough could render the employment unsuitable."[36] The Court added that reasonableness of refusal was an entirely separate issue which related to reasons personal to the employee. The proposition that it is not unreasonable to refuse unsuitable employment is, however, practically inevitable, with the consequence that it is not uncommon to find the Tribunal merging the two issues.

Examination of the decisions of the Tribunal reveals the criteria considered relevant to 'suitability' and 'reasonableness'. For example, in Dunn v. James Jack & Son[37] it was held that it was not unreasonable for the applicant, who had been employed as a female assistant baker for 16 years, to refuse an offer of employment at other premises, acceptance of which would have meant reverting to a lower status, loss of £1 weekly in wages, and the expenditure of extra time and money in travelling. It also appeared that the applicant would not have been able to get home during the lunch hour to prepare a meal for her semi-invalid husband.

In Belle v. Fielding & Johnson, Ltd.[38] it was held that the applicant was not entitled to a redundancy payment where the reasons given for her rejection of the offer of suitable alternative employment were that she did not like the work and that she was thinking of training to be a nurse. Considering what was meant by 'suitability', the Tribunal commented:

> We decide that the suitability of the alternative employment offered must depend, in the first place, on the nature of the work done previously, on applicant's earnings, on travelling facilities; if these would be substantially the same in the employment offered, then the employment is, prima facie, suitable. It is right, we consider, to take into account also such matters as claimant's domestic circumstances where these affect her ability to accept the offered employment; but we do not consider that it is right to take into account the applicant's preference for an entirely different occupation, particularly an occupation which is completely outside the respondent's business.[39]

The Tribunal has held that an offer to re-engage a redundant employee as an outside representative was not an offer of suitable employment for a man of 56 who had been doing sedentary work and had a history of angina pectoris.[40] Similarly, it was held that an employee who suffered from a restriction in her field of vision which

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35. S. 2(4).
36. Carron Co. v. Robertson [1967] 2 I.T.R. 484, 486. But see Gotch & Partners v. Guest [1966] 1 I.T.R. 65, 66.
37. [1967] 2 I.T.R. 267. See also Cassidy v. South Mills (Rayon) Ltd. [1967] 2 I.T.R. 272.
38. [1966] 1 I.T.R. 167.
39. Ibid.
40. Lever v. W. Ashley & Son Ltd. [1966] 1 I.T.R. 320.

made it difficult for her to work in unfamiliar premises was not unreasonable in refusing an offer to work in new premises.[41] Again, where a Newcastle employee, who was a married man living locally with two children attending local schools, refused an offer of alternative employment in Glasgow, it was held that he was nevertheless entitled to a redundancy payment.[42]

It is clear that already a considerable body of case law has been established, and, assuming that the Tribunal will in practice be guided by its own previous decisions, this will assist persons advising employees whether refusal of offers of alternative employment made by their employers will result in the loss of their rights to redundancy payments.

The 'Machinery' Provisions of the Act

Significant among the provisions of the Act are those relating to the financing of the scheme. Although in theory it might have been possible to impose upon employers the obligation to make redundancy payments in full as and when the occasion might arise, this would have placed a considerable burden on employers faced with redundancy situations before having had time to make financial provision for such contingencies. In the result some redundant employees might have been unable to recover the payments due to them from their employers. The solution adopted by the British Government has been to integrate the redundancy payment scheme into the structure of the welfare state. The Act provides for the establishment of a Redundancy Fund under the control and management of the Minister of Labour.[43] The money for the fund is raised by a surcharge on the employers' contribution to the National Insurance Stamp.[44]

In the event of redundancy, employers are required to make appropriate payments to the employees concerned and to furnish them with written statements indicating how the amounts of the payments have been calculated. Employers are then entitled to recover from the Redundancy Fund a proportion of the payments which they have made.[45] The amounts of the rebates to which employers are entitled are to be calculated in accordance with the Fifth Schedule to the Act. The effect of the Schedule is that employers are able to recover rebates equal to one-third of the payments made in respect of years of service between 18 and 21 years of age, two-thirds of the payments in respect of service between 21 and 40, and seven-ninths of payments in respect of service over the age of 40.[46] The reason for the variable rates of rebate is not obvious, and one might be excused for thinking that a flat rate would have been preferable.

Payments may be made directly from the Fund where an employee claims that he is entitled to a redundancy payment and he can show either that he has taken all reasonable steps (other than legal proceedings) to recover the payment and the employer has refused or failed to make the payment in full, or that the employer is insolvent.[47] Consequently employees will not suffer in cases where employers are unable to meet their obligations under the scheme.

Where any dispute arises as to the right of an employee to a redundancy payment, or as to the amount of the payment, the matter may be referred to the Industrial Tribunal for determination.[48]

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41. Nelson v. George Grierson & Son [1966] 1 I.T.R. 309
42. Bainbridge v. Westinghouse Brake & Signal Co., Ltd. [1966] 1 I.T.R. 55.
43. S. 26.
44. Ss. 27, 28.
45. S. 30.
46. Schedule 5 para. 2.
47. S. 32.
48. S. 9.

Similarly, the Tribunal is empowered to determine questions relating to employers' rights to recover rebates from the Redundancy Fund.[49]

Conclusions

The redundancy payments scheme, as it is currently constituted in the United Kingdom, is scarcely likely to recommend itself to countries where the concept of the welfare state has not received unqualified approval. It amounts to a significant interference by the Government with the employer-employee relationship, and betrays a lack of confidence in both the principle of freedom of contract and the collective bargaining power of the trade unions. The mere existence of the Redundancy Fund, from which employers can recover part of the payments made by them, should not conceal the facts that the scheme is financed by employers, and that the burden thus imposed upon them is not inconsiderable,[50] particularly when it is taken in conjunction with the other obligations at present enjoined upon employers.

The statute establishing the redundancy payment scheme may be criticised on the ground that some of its provisions are unnecessarily complex, but this appears to have given rise to no real difficulty in practice. More fundamental is the criticism that the scheme has at least in part failed to fulfil the expectations of its protagonists. The Minister of Labour, moving the Second Reading of the Bill, said:

> The scheme embodied in the Bill has to be looked at alongside the other measures that the Government have taken and are planning to take. It fits in with the machinery that we are establishing to ensure the planned use of our resources, especially our resources of manpower, which will be fully stretched in the coming years. It is an important complement to our efforts to develop the science-based industries and to deploy our manpower and other resources where they can make the most effective contribution to the economy.[51]

In retrospect, the Government's expectations of the scheme appear to have been excessively sanguine. Over the past two years it has become apparent that, whatever the merits of the redundancy payment scheme, it is totally irrelevant to the solution of the economic problems and industrial malaise with which the United Kingdom has been beset.

G.R. Bretten

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49. S. 34.
50. The surcharge was initially 5d. per week for every male employee, and 2d. for every female employee. By the Redundancy Fund Contributions Order 1966 (No. 1461) the sums were increased to 10d. and 5d. respectively.
51. Hansard, House of Commons, vol. 711, cols. 33-34.