

Urgent oral question

1st December 2009

7.3 Deputy G.P. Southern of the Minister for Social Security regarding the terms of redundancies at the Jersey New Waterworks Company Limited:

As the Minister with responsibility for J.A.C.S., does the Minister for Social Security support J.A.C.S. in producing a document which requires employees to abrogate their rights under the Human Rights (Jersey) Law 2000 and the Health and Safety at Work (Jersey) Law 1989 under paragraph 4 and items F and G of Schedule 1 to the document which outlines the terms of their redundancy?

Deputy I.J. Gorst (The Minister for Social Security):

I am advised by J.A.C.S. that the draft document referred to in the question is not one in substance that differs significantly from those used in many circumstances and on many occasions whereby an employee and employer seek to reach agreement without reference to the Employment Tribunal facilitated by J.A.C.S. I do not see these documents generally as they are a matter for the employee and employer and their advisers. It is for advisers to advise the employee of the potential consequences of signing such agreements. I understand that while the schedule is one requested by the employer in this case, J.A.C.S. officers will provide advice to all those considering signing the agreement notwithstanding that those employees could or indeed should seek advice from their representatives whom they have paid to give that advice.

7.3.1 Deputy G.P. Southern:

Is the Minister aware of whether J.A.C.S. have sought legal advice on the inclusion of an all-encompassing exemption such as failure to comply with any obligations under the Human Rights Law and, in particular, with any breach of Health and Safety at Work which may be a separate incident and for which the Minister for Social Security must be responsible, whether J.A.C.S. has sought legal advice as to the ability of such a schedule to contain such terms?

Deputy I.J. Gorst:

It is my understanding, and I just said in my earlier answer that in fact it is for the employee and the employer to seek legal advice before entering into such a document. As I said earlier, this is a pretty standard document. It is my understanding that in fact one could argue that by being explicit in the schedule, that the employer is following good practice so that the employers are aware or seek appropriate advice prior to signing the document.

7.3.2 Deputy M. Tadier:

Does the Minister agree with the comments a moment ago of the Minister for Treasury and Resources that in fact the search for a profit and shareholder return are not linked ... the 2 are not linked even though we have just heard evidence from Deputy Southern of the existence of documentary evidence that suggest that not only are the 2 linked, but in fact that profits and shareholder return is one of the prime reasons for redundancy?

Deputy I.J. Gorst:

The Minister for Treasury and Resources acts as liaison or, in effect, shareholder of this company and therefore I assume he is party to information which I am not and therefore it is not appropriate for me to say the basis of information that he may have made that comment earlier.

Deputy M. Tadier:

But the Minister surely can state whether he agrees or not that the 2 are linked. That is simply what the question was.

Deputy I.J. Gorst:

Whether increased profits may lead to increased dividends, well of course they may, but they may also lead to increased investment in infrastructure.

7.3.3 Deputy M. Tadier:

I think the Minister was being slightly evasive there as the question was asked whether the redundancies were linked to a search for greater profits. That was simply the question. I do not think the Minister understood that.

Deputy I.J. Gorst:

Then all I can do is refer him to the answer I gave to his previous question.

7.3.4 Deputy S. Pitman:

Is the Minister satisfied with the way Jersey Water is looking after its staff and could he also say has he consulted employees as to their views on abrogating their human rights?

Deputy I.J. Gorst:

I would say it is not for me in my role as Minister for Social Security to say whether I am satisfied or not. That is a question which should have been addressed to the Minister for Treasury and Resources either as shareholder or to the board directly. Members of my department have visited Jersey New Waterworks, they have run courses, they have tried to inform those people who could be facing redundancy about their rights and services that we can offer them as a department. As with regards to the legal section of the answer, when one's lawyer has given the advice that has just been given it would be very remiss of me to say anything further.

7.3.5 Deputy S. Pitman:

Supplementary. The Minister for Treasury and Resources has said that he believes that Jersey Water are looking after their staff. Is he aware that the Minister for Treasury and Resources has consulted the staff on abrogating their human rights?

Deputy I.J. Gorst:

I am not sure. Is the Deputy asking whether I am aware whether the Minister for Treasury and Resources has consulted with the employees of Jersey New Water? The answer is I am not aware.

7.3.6 Deputy T.M. Pitman:

Very briefly, does the Minister consider that this erosion, clear erosion of best practice in the production of such documents, has very worrying long-term implications for impact on his department?

Deputy I.J. Gorst:

I am not sure which best practice the Deputy is referring to. As I tried to say, these agreements are fairly standard. I think, suffice to say, that it is my understanding that something like 75 per cent of cases that could go towards the tribunal manage to avoid the tribunal by signing agreements such as this to keep claims and disagreements outside of the tribunal process, which I believe is what this House wished for when it approved the setting up of J.A.C.S.

7.3.7 Deputy T.M. Pitman:

Supplementary. I would say that I meant this erosion of the value of human rights. Surely that is a worry to the Minister.

Deputy I.J. Gorst:

It is not for me to comment on whether this is an erosion on the value of human rights or not. Thank you.

7.3.8 Deputy G.P. Southern:

Final supplementary. Firstly, while he refers to: "This is common practice", I assume he means it is common practice here, is he aware of whether such all-encompassing phrases are used in other jurisdictions and, if not, will he agree to research it elsewhere; and (b) given that part of the function of J.A.C.S. is to protect employees, does he feel that such a set of terms being drawn up by J.A.C.S. only serves to reduce the faith that employees might have in their services overall?

Deputy I.J. Gorst:

As I said at the start, it is my understanding that this is a reasonably common approach. Some of the paragraphs contained in this agreement are paragraphs that one might find in an Acas (Advisory, Conciliation and Arbitration Service) agreement which is the U.K. body. I also understand the Isle of Man similar body, and the Guernsey similar body, in answer to that... In answer to the second part of the Deputy's question, I quite clearly said in my opening remarks that this was a draft documentation. It has yet to be agreed by employer and employee and therefore J.A.C.S. at this stage says: "I understand it would take a standard documentation add-in what might be requested, it would then be discussed by employer and employee upon advice from both sides and that employee would then make a decision." J.A.C.S. would act, as it were, as an independent arbiter and make sure that those employees are aware of all the implications of signing such a documentation and I believe that they will do just that in this case. If they have any doubt they will request that the employee seek legal advice before signing such a document.

The Deputy Bailiff:

Thank you. That brings the 3 urgent questions to an end.