

Court of Appeal overturns Industrial Disputes Tribunal decision

August 16 2017 | Contributed by [George Z Georgiou & Associates LLC](#)

Facts Decision

The Court of Appeal recently overturned a decision of the Industrial Disputes Tribunal, stating that an employee's termination was not unlawful, but rather due to redundancy.

Facts

The employee had worked in the photographic registry department of a local newspaper company in Cyprus. As the sole employee in the photographic registry department, the employee had two responsibilities: archiving photographs and, on request, identifying old newspaper editions in microfilms.

In April 2009 the employee was served with a notice of termination which stated that her position would be abolished due to changes in the methods of production and modernisation of the organisation. The employee brought proceedings before the Industrial Disputes Tribunal, claiming damages for unlawful dismissal.

In its defence, the employer argued that the photographic registry department had been abolished in its entirety and thus the employee had to be terminated. Specifically, the employer made the following submissions:

- In relation to the employee's first responsibility, the employee was initially archiving photographs manually in paper form. In 2003 the employer adopted KUDO, a digital archiving system, which was solely operated by the employee. The employee was required to archive each photograph digitally using KUDO and manually in paper form. In 2007 the employer adopted NEWS ASSET, a new digital archiving system that could be used by anyone (eg, a journalist or photographer) and rendered KUDO and the manual archiving system unnecessary. In other words, the employee's first responsibility became obsolete and she was only kept on by the employer for a transitional period until all journalists and photographers had assimilated the NEWS ASSET system.
- The employee's second responsibility of identifying old newspaper editions in microfilms on request was also abolished following the employer's decision to publish the newspaper online.

Decision

At first instance, the Industrial Disputes Tribunal observed that most of the employer's submissions remained unchallenged by both the employee and the Redundancy Fund.

The tribunal then accepted that the manual archiving of photographs in paper form and the identification of old newspaper editions in microfilms were indeed wholly abolished. However, the digital archiving of photographs was a process that was transferred from the KUDO system to the NEWS ASSET system and could therefore be performed by journalists and photographers. On this reasoning, and due to insufficient evidence as to the time spent by the employee on digital archiving, the tribunal held that the employer had failed to prove that the employee's first responsibility had

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been wholly abolished and was not assigned to other employees and therefore no redundancy grounds to justify the termination were found.

The employer appealed the tribunal's decision, arguing that the abolition of a one-person department was completely disregarded and that this solely constituted a valid redundancy ground.

In its ruling, the Court of Appeal overturned the tribunal's decision, stating that the abolition of the KUDO system – which was solely operated by the employee – and the adoption of the NEWS ASSET system meant that the employee's first responsibility was transferred to and performed by others, which resulted in the abolition of the one-person department in which she worked. Therefore, the Court of Appeal found that the employee's dismissal was not unlawful and was due to redundancy in accordance with Article 18(c) of the Termination of Employment Law (Law 24/1967) (as amended).

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