analysis of court cases
- Oracle 2018 -

CAC ruling on Oracle EWC (Case Number: EWC/17/2017)
Body: Oracle European Works Council Company: Oracle
Type: judgment of the Court (on EWCs) Date: 12/02/2018

On 12 February, the Central Arbitration Committee (CAC) in London delivered its judgment in a dispute between the Oracle European Works Council and the group's management. While the case featured, sadly, a fairly ordinary dispute over restructuring and lack of appropriate EWC involvement, some parts of the judgement of the Central Arbitration Committee leave many experts concerned.

Facts leading to the case / background

On 27 March 2017, the management, in a conference call, had informed members of the EWC of a restructuring, which would involve a number of countries and 380 job losses. The EWC believed that management had violated a number of the provisions of the British Transnational Information and Consultation Rights (TICER). The Oracle EWC was set up after long struggles with the management and negotiations that were not concluded within the statutory period of three years. In consequence, the Oracle EWC was set up in accordance with the British subsidiary requirements (minimum legal standards).

In the current case, the Oracle EWC criticised management for:

1. not providing enough financial information to enable it to carry out a detailed assessment of the proposal;
2. providing information only on job losses and not on other parameters such as quality of service or customer satisfaction;
3. beginning to lay off staff even before the EWC had been informed;
4. holding a virtual meeting with the EWC, whereas the regulation relating to the operation of the Council stipulates that physical meetings should be held;
5. telling attendees that the presentation given during the meeting was strictly confidential.

In its judgement the CAC ruled that:

Ad. 1 and 2) Management should have provided information to enable the EWC to assess the impact of the plan on all employees, and not, as the employer claimed, simply on those who would lose their jobs. However, management was under no obligation to provide some of the financial information requested by the EWC, since the aim of these requests was solely to check or challenge management's decision, and according to the CAC, this is not something within the competence of the EWC.

Ad. 3) As to whether management should have waited until the EWC issued its opinion before implementing its decision at national and local level: legal provisions covering the coordination of procedures at European and national level "do not indicate that the management cannot apply its decision before the EWC issues its opinion".

Ad. 4) The meeting held on 27 March was not sufficient to meet the employer's obligations in terms of information and consultation. The CAC considered that it could only be an information-giving event, which subsequently should then have led to a consultation stage.

Ad 5). The confidentiality requirement imposed by the employer was considered unreasonable, as there was no evidence that any disclosure would have caused harm to the company.

In some of its parts this judgement is concerning to EWCs, trade unions and legal experts as it diverges from other past judgement relating to EWCs and information and consultation rights, such as e.g. the Renault Vilvoorde case and the GDF-Suez merger case (to name just a few) and confirming that information and consultation procedures must be completed before management takes and implements their final decisions and that it is thus managerial responsibility to include information and consultation with employee representatives at an early enough stage.