

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD1355/2005

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Sheedy

Members: Mr. P. Casey
Mr D. McEvoy

heard this claim at Cork on 23rd February 2007
and 24th April 2007

Representation:

Claimant :

Mr. Paul Depuis, Assistant Branch Organiser, SIPTU,
Connolly Hall, Lapps Quay, Cork

Respondent :

Mr Larry Keena, IBEC, Knockrea House, Douglas Road, Cork

The determination of the Tribunal was as follows:-

Respondent's case:

The Tribunal heard evidence from the financial controller. The claimant's role since 1991 was that of credit manager and he was responsible managing the debts of three named companies. In 2002 the volume of work substantially reduced and again in 2004 they lost a contract that accounted for 40% of their business. In 2005 they were losing further customers therefore the claimant's role had diminished dramatically. Over the years other areas of work such as stock-taking was allocated to the claimant but as they computerised this area took very little time, in or around twenty minutes. The claimant was asked if he would take on another area of work and he refused to do so as he did not want to work with a particular manager. The respondent had to then get someone part-time to take over that area. In September 2004 he was asked to take over another area and he refused. The respondent pulled out of certain areas of business and that which remained did not require

huge amount of effort in collection. The respondent looked at redundancies throughout the company. The claimant's role was a stand-alone position and witness and another colleague got involved occasionally in chasing funds.

The claimant would not accept that he should be made redundant and said he would have expected more money. A meeting was held with the claimant and his union representative on 12th August 2005 but he refused to accept the redundancy forms. A letter dated 17th August 2005 followed from his union. When it came to redundancies the respondent looked at every area in the company where savings could be made as they were in a loss-making situation. The claimant was in a singular position and a separate person was not needed for this area. JM who was present at the hearing applied for the redundancy but did not get the respondent's agreement to her application. The respondent asked regarding alternative positions for the claimant however no suggestions were put forward by him. Witness took over debt collection and other changes after that and they now report to the parent company in Philadelphia. Witness left the respondent company in November 2006.

In cross-examination witness said there were fifteen redundancies in total. Initially all the redundancies were to be on a voluntary basis. After the claimant was told he was being made redundant his union wrote to the respondent seeking his re-deployment. As the claimant was the credit controller the respondent could not see any obvious alternative role with his experience and qualifications and they were expecting the union would have some suggestions. After the claimant left witness took over the credit control management role and later on JM took over the cash receipts. While JM had applied for the voluntary redundancy she was not considered as the respondent had not looked for redundancies in that area. The question was asked as to why the claimant could not have been trained into JM's role and witness said that the claimant never had experience at the more basic clerical role below his level, he would have been over-qualified and they could see him walking out after a few months. JM's wages were lower than those of the claimant and it was not a role they considered making redundant.

In answer to questions from Tribunal members witness said there was no justification having someone full time in the job. There were no posts available to train the claimant upwards and above him there was a qualified accountant or witness himself.

Claimant's case:

JM in her evidence said that she applied but her job was not in line for redundancy. She found the claimant to be very dedicated and thorough and he would be capable of fulfilling her role.

In cross-examination witness said the main part of her work involved the paying of accounts. Since the claimant left she has taken on some of his work which would take two days a week and she has done some overtime since taking on this work.

In answer to questions from Tribunal members witness said they had two separate jobs with the claimant working in debtors and she in creditors.

The claimant in his evidence told the Tribunal that he was the credit controller for three companies and he also had other responsibilities. He commenced his employment with the respondent in 1985 as assistant production manager and worked his way up to customer services manager. In 1993 he was asked to take over the credit controller function. Huge amounts of monies were outstanding at this time and having taken over he put procedures and policies in place. In addition he also did

stocktaking reports and other ad hoc duties.

When the respondent announced the voluntary redundancies employees were told to go to the financial controller if they were interested in the package. The claimant did not make any enquiries as he was not interested in leaving. He had been twenty years with the company and always enjoyed his time there. A committee was formed through the union to negotiate a package. As he went on holidays in July 2005 the negotiations were at stalemate stage. When he returned from holidays on 2nd August 2005 he was called to a meeting, which lasted five minutes, and was told that his job was being dismantled. He refuted this as his role was still there and none of his duties were made redundant. He did not look for more money at this meeting and did not have his union representative present. He was outraged that they were getting rid of him as his duties were still there, only the volume had reduced. Before he left there were five working in accounts and this number had not changed as of the date of this hearing. New people have also joined since the claimant was made compulsory redundant.

He would have considered any role and has carried out any function assigned to him in the past but refused to work on the factory floor as it was a totally non-clerical role. He would have had no problem doing JM's job and would have loved to pursue his accounts qualification. He is part qualified as an accountant and also has a business degree from UCC, which was part-funded by the respondent. He had given twenty years of his working life to the respondent and was diligent and hard working. With his long service he should have had a union representative present and allowed to negotiate. He felt there was no intention of the respondent looking for an alternative position and that the decision to make him redundant was already decided. They were just going through the motions. He also felt that there were other issues in the background and it did not have anything to do with his standard of work. There was a bad relationship between the managing director and the claimant and the claimant felt that he treated him with contempt. All the other volunteers were happy to take the redundancy package and he was the only one to be made compulsory redundant. He was not told the criteria for the redundancy. In 1986 there were redundancies where ten/fifteen were let go and LIFO (last in first out) was applied. At that time the claimant was the last in and he was told by management that he would be the first to go if there were not sufficient volunteers. In his twenty years with the company he did various jobs and he would have considered any position in the company. He felt it was an opportunity to get rid of him and it had nothing to do with his qualifications.

In cross-examination the claimant accepted that his was a stand-alone position in that he was the only one doing credit control. While his work as credit controller was reduced he would not accept that his role was diminished. The role offered was on production and not administration and on that basis he turned it down. JM's role was never put to him as an option but he would have considered it if offered. He agreed that based on his qualifications and experience that JM's role was not considered suitable.

In answer to questions from Tribunal members in relation to the meeting on 29th August where his union representative was present and he did not put forward suggestions in relation to other positions in the company, he felt that it was up to the respondent to do so and if they wanted him they'd have given him the opportunity to continue in employment. The reason that his duties were dismantled was that the respondent was going out of the wet glue business. Apart from the managing director his relationship with staff and management was very good. While the redundancies were well flagged prior to his holidays it was a surprise on his return as he had thought there would be enough volunteers from the talk around the factory.

Determination:

No evidence was advanced to the Tribunal which would indicate the claimant was unfairly selected for redundancy. In evidence the claimant indicated he made no alternative suggestions as to his continuation of his employment. Evidence was advanced that the claimant's job was significantly reduced. Form T1A requested re-instatement/compensation. On re-instatement the Tribunal is of the view this was not possible as his previous role no longer existed. On compensation – as the claimant had received his full redundancy entitlement and accepted same, the Tribunal agreed there was no case for further compensation. Evidence was advanced to the Tribunal that the claimant was in alternative employment very shortly after his being made redundant at a more enhanced rate of pay.

The claim under the Unfair Dismissals Acts 1977 to 2001 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

