

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

Employer

UD1176/2006

against the recommendation of the Rights Commissioner in the case of:
Employee

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr D. Hayes BL

Members: Ms J. Winters

Ms K. Garvey

heard this appeal at Dublin on 16th March 2007

Representation:

Appellant: XXXX

Respondent Mr. Dessie Courtney Assistant Branch Secretary,
Construction Branch, Mr. Noel Maguire, SIPTU, Liberty Hall Dublin 1

The determination of the Tribunal was as follows:

This case is before the Tribunal by way of an employer appealing a Recommendation of a Rights Commissioner ref: (r-043791-ud-06/JT), under the above Act. The employer is the Appellant and the employee the Respondent.

Background:

Dismissal is not in dispute in this case; it is agreed that the Respondent was dismissed by reason of redundancy. No dispute was made in respect of there being a genuine redundancy situation. The Respondent contends that he was unfairly selected for redundancy.

The Tribunal heard evidence from the commercial director of the company. The company supplies consumables such and hangars, cutting paper, bias binding and shoulder pads to clothing companies

in Ireland Scotland and England. The company lost business as a lot of the trade had moved to the Far East. The company was losing money and had to cut costs. The company first approached their landlord to try to reduce the rent and the landlord told them that the rent was low and he should actually increase the rent. The three directors of the company decided to make some of the positions redundant. The company vans were sold and five, out of six, drivers in England were made redundant. Five out of twelve factory staff in the UK were made redundant. In total the company effected twelve redundancies.

The witness personally told the Respondent that he was being made redundant. The decision was taken to make him and the manageress redundant because these were the two highest paid employees.

The Respondent was a van driver and he also “covered” for the manageress when she was out. He also did warehousing work. There was also another van driver in the Irish outlet.

The witness explained when asked that there was another van driver still employed by the company and he started working with the company after the claimant had commenced.

Employee’s case: the representative for the employee stated that they did not wish to call evidence and he made a closing statement.

Determination:

The Respondent commenced his employment with the Appellant in March 1998. He was dismissed by reason of redundancy in June 2006. It was not disputed on behalf of the Respondent that there was a genuine redundancy situation and the Tribunal accepts that this was the case.

Before the redundancies there were three employees in the Appellant’s Irish operation, one of whom was the Respondent. In addition to the Respondent, who was described as the supervisor, there was a manager and a van-driver. The Tribunal was told that the Respondent’s duties involved warehousing, dealing with orders and deliveries. He also acted as manager when the manager was on leave.

The Appellant decided that redundancies were required. The Tribunal was told that this was seen as the option of last resort and that alternatives were examined before this decision was reached. It was decided to make twelve redundancies in England and two in Ireland. In Ireland, the company decided to make the two highest paid positions redundant. The criterion that they used was money. They were seeking to make as big a cost-saving as they could.

It is understandable that an employer in the circumstance in which the Appellant found itself seeks to reduce costs as much as it reasonably can and the Tribunal accepts that the Appellant tried to act honourably. However, in this case the Respondent did many of the same duties as the employee that was retained. They were both suitable for the job that was being retained but no meaningful selection was made between them. The possibility that the Respondent might take a reduction in pay to do the van-driving job was not examined, for example. The difference in annual pay between the Respondent and the employee retained was about €3,000.00. For this reason the

Tribunal is satisfied that the selection of the Respondent for dismissal was unfair.

The Tribunal therefore dismisses this appeal and, in respect of the Unfair Dismissals Acts, 1977 to 2001, awards to the Respondent compensation in the amount of €2,000.00 as being just and equitable in the circumstances. This takes account of the fact that a redundancy payment was already made to the Respondent.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)