

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD1013/2006

Against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr D. Mahon, B.L.

Members: Mr J. Walsh
Mr. P. Woods

heard this claim at Dublin on 7th June 2007 and 18th October 2007

Representation:

Claimant:

Mr. Christopher B. Walsh, Solicitor, 90 Park Drive Avenue, Castleknock, Dublin 15

Respondent:

Mr. Ken Stafford, 7 Castletown Court, Celbridge, Co. Kildare

The determination of the Tribunal was as follows:

Respondent's case

The respondent company is a small printing company, based in an area of relatively high unemployment, which was first set up in 1990. The owner of the company gave evidence that his business, in common with others in the same market, is struggling.

His main business is printing invoices, statements, cheques etc. and is under severe threat from the increase in e-commerce. The market in general has seen a number of high-profile liquidations, mergers and redundancies in recent times. The company has been making increasingly large losses over the last two years and turnover has dropped. He is in negotiations to acquire another printing business in a less vulnerable section of the market in order to reach a critical mass of turnover, but currently the business is in trouble. In 1999 he employed 23 staff. Now he employs 15 staff, two of whom are part-time.

The claimant was employed as printer and, later, print manager from the start of the

business. In 2002, on the retirement of another director, he was made Production Director. He did not put any capital into the company. He was an excellent worker. His job was to run the factory whilst the owner concentrated on making sales. In September/October 2005 the respondent felt that due to the business environment and to the fact that the claimant's salary as Production Director was escalating due to National Wage Agreements, the post of Production Director was no longer required or viable in the company. The claimant was taking home €200 per week more than the owner at this stage. The owner was in discussions with the claimant from September 2005 to May 2006 in an attempt to agree a way of retaining him in another position without overall loss of income for the claimant. He proposed making the claimant redundant from his post as Production Director and re-hiring him as Printer with responsibility for one aspect only of production. This would eliminate one layer of management and free up the claimant to spend more time on the printer. This, in turn, would allow the respondent to take back in to the factory printing work which they had previously farmed out. It would have the effect of making the factory more productive. The owner proposed to make the claimant redundant from the post of Production Director, with a redundancy payment (statutory) of around €20,000.00 and to re-hire him as a printer on a smaller salary. He calculated that, taking into account the redundancy payment and overtime, the claimant would not lose out financially for the next three years. Additionally he agreed to honour a previous offer of a payment of €76,000.00 if the claimant stayed until 2016, when the owner planned to retire. He could not guarantee overtime, but was confident that it would continue. He had confirmed with Revenue and with the Department of Enterprise, Trade and Employment that it was in order to make someone redundant from one position and re-hire them in another position immediately afterwards.

The claimant had not been willing to participate in these discussions and the owner had been frustrated in his dealings with him on the issue. When the owner finally asked, in frustration, what it would take to keep the claimant, the claimant replied ten per cent of the company. Around May 2006 the owner felt he had to draw a line under the situation and put it to the claimant that he couldn't keep him as production director, but he did want him to stay as a printer. The claimant was a valued employee, but the owner also had to consider his responsibilities to other employees, one of whom is the claimant's son. The claimant told him 'I'm leaving. You should get used to that'.

On 22nd July 2006, the owner had the redundancy forms and cheque for €20,000 ready for the claimant when he told him he was no longer employed as production director. The claimant refused to sign the forms and did not accept his redundancy. No payment was made and the claimant's employment ended there. In August the owner again contacted the claimant to say that the cheque was still there for him if he would change his mind and accept the offer. He had no response from the claimant.

Under cross-examination, the owner stated that the claimant's previous managerial tasks were now being covered by his ex-colleagues and he had employed another printer.

In answer to questions from the Tribunal the owner confirmed that the claimant was not a beneficial director; he owned no shares in the company. The business was one

company. It had been set up as Computer Stationary Limited. In 1999 it had acquired XXXX, which was based in Inchicore. In 2002 the owner bought out his business partner (TC) and sold the Inchicore premises, moving the staff from Vanessa Press to the main premises. He later re-named the company XXXX. In 1999 he had employed 5 to 6 printers (one of whom was the claimant), 2 studio operators, 4 finishers and a number of sales co-ordinators, sales reps and accountants. On the day of the hearing he employed 3 full-time printers, 1 studio operator, 1 general operator, 1 qualified printer who does mainly non-printing jobs, 4 finishers, 1 accounts person and 3 sales co-ordinators. Losses were still occurring. Turnover had been €2.4million at its maximum. In 2006 turnover was down to €2million and it was on target to be reduced by another 10% in 2007. He had restructured the business across the board. The offer made to the claimant is no longer on the table as the business has employed another printer since the claimant left.

Claimant's case

The claimant had worked with the owner and TC at a previous company. In late 1989 TC approached the claimant to ask if he would like to join a new company being set up by TC and the owner. The claimant agreed to join as a printer. The company formed in January 1990 and production started in February 1990. In the beginning the claimant did everything; print finishing, plate making, deliveries. As the company got busier other people were employed. He started on a relatively low salary but got paid plenty of overtime. He told TC that he couldn't keep on like this and consequently got put onto a fixed salary. When another printer was employed, the claimant realised that the new printer was on a higher salary than himself and tackled TC about this. TC told the claimant that the claimant was investing his labour in the company. The claimant was working long days from 7am to 10pm and often working Saturdays and Sundays and Bank Holidays. He never had an increase in his wages beyond what came from national agreements. The agreement was that the claimant was on a fixed salary and he would cope with the workload. There was pressure on everyone to get the job done. In 16 years the claimant had missed about 20 days from work and 10 of these had been due to a bout of pneumonia from which, due to pressure of work, he had come back to work earlier than his doctor had recommended. Through the years printers had joined the company on more money than the claimant. TC had told the claimant that the three of us (the claimant, the owner and TC) were in it together and that they would get money out of it in the end. The claimant never got any money out of the business other than his salary. In 2002 TC left the company. At this time the claimant went to the owner and said TC had made verbal promises regarding the claimant's stake in the business. The owner agreed the claimant's case had merit and said he would have his business advisor (KS) draw up an agreement. The claimant was given the title of Production Director. KS drew up an agreement, which would have given the claimant between €60,000 and €70,000. The claimant felt this amount was a bit low and negotiations ensued. However, KS became ill and the agreement got shelved in 2002.

In 2006 the owner approached the claimant with his redundancy offer. The claimant asked about the contract discussed in 2002 but the owner shrugged his shoulders as if it had never happened. The owner made between 10 and 15 offers to the claimant.

All of these involved making the claimant redundant and reducing the claimant's salary on re-employment as a printer. The offers would have meant his salary was almost halved and he could not afford to accept. The claimant came up with one offer, which was to reduce his salary but give him a percentage of the company. In September/October 2005 the claimant had a meeting with the owner, the office manager and the financial advisor. At this meeting the claimant learned for the first time that the company was losing money. He was surprised as they couldn't keep up with the work in the factory and were farming out work to local printers. He asked the owner to investigate why they were losing money but the owner never came back to him. He was never shown why they were losing money. Following this the claimant started to get instructions from staff. The owner started to recruit staff without the claimant's involvement and without even introducing them to the claimant. The claimant never resigned as director of the company. He agreed with the owner that the printing business is always changing and companies have to change with it. Work was slowing down. Bigger companies were investing in newer and faster machinery. Printcom hadn't done this. The claimant asked for a reference three or four times before the final day but didn't receive one. It was practically impossible to get a job without a reference. The claimant left the company in July 2006 with nothing. He received €275 per week unemployment benefit. He applied for a Taxi licence, which he got in early March 2007. He has been working as a Taxi driver and attending college since this time.

In answer to questions from the Chair, the claimant said that he had never had a letter of appointment as Director. He didn't really know what a director was. His job had not changed on appointment as Director.

Under cross examination the claimant agreed that he had no evidence that TC had cleared his discussions with the claimant with the owner. He agreed that the owner had offered him a formal agreement in 2005, which would be worth between €60,000 and €70,000 to the claimant in 15 years time. His solicitor had recommended he didn't sign the agreement. He agreed that the owner's accountant's had advised that no additional severance payment could be made to him other than the sum offered on redundancy. He agreed that the owner had finally offered him redundancy from the position of production director, with a lump sum payment, with re-employment as a printer on a reduced salary and an additional payment of around €80,000 in the future. The claimant had sat down with the company accountant and worked out that his take home pay would be reduced to €600 per week from €900 per week. He agreed that, given the redundancy payment of €20,000, he would have been at no financial loss for 60 weeks. He agreed that he would have been paid overtime under the agreement proposed and that the amount of incoming work was the deciding factor in setting overtime; the owner did not get involved. He believed overtime would have continued. The claimant had never put any points in writing to the owner about this proposed agreement. The redundancy proposal was discussed between January and May 2006. The owner was clear he wanted the claimant to stay and he had always been a good employer. The printing industry had problems and there were lots of redundancies. The claimant accepts that the audited accounts of the company show it was having problems. He had a problem accepting redundancy. He had been advised that he couldn't be made redundant and go back to the same job, and he believed this would, in fact, be the case. Redundancy was a serious

issue and it didn't make sense to him.

In answer to questions from the Tribunal, the claimant agreed that, had he seen the figures of the offer laid out to him as they were laid out before the Tribunal, it would have made a difference to his reaction. He had always understood that his earnings would be reduced to around €600 per week.

Determination

The members of the Tribunal carefully considered the detailed evidence adduced, statements put forward and documents submitted during the two-day hearing. The Tribunal finds that a genuine redundancy situation did exist in relation to the claimant's employment and that the claimant was fairly dismissed by reason of redundancy. Therefore, the claimant is entitled to redundancy payment in accordance with the Redundancy Payments Acts 1967 to 2003.

Having regard to all of the circumstances, it is the unanimous determination of the Tribunal that the claimant was dismissed by reason of redundancy and, as redundancy and unfair dismissal are mutually exclusive, the claim under the Unfair Dismissals Acts 1977 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

