

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

Employee

RP119/2007

Against

2 Employers

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mrs. M. Quinlan

Members: Ms J. Winters
Ms M. Mulcahy

heard this appeal at Dublin on 30th January 2008

Representation:

Appellant(s): The appellant in person

Respondent(s) Mr. Michael Gillen, IBEC, Confederation House, 84/86 Lower
Baggot Street, Dublin 2

The decision of the Tribunal was as follows:-

Appellant's Case

The appellant told the Tribunal that XXXX employed him for three and a half years in the powered access side of the business. He brought machines from the USA to Ireland and he worked under the direction of the production manager and the engineering manager. On 27 April the HR manager personally handed every employee a letter stating that the powered machine end of the business was being sold to a UK company Tanfield. He was asked to sign a document objecting to the transfer and this preserved the pension for the duration of the transfer period. Under this transfer agreement Upright gave Tanfield a further three months to transfer to the UK. No offer of employment was made to the appellant from the time he was informed of the transfer of undertaking to the time he left. Due to the uncertainty of the situation he decided to seek alternative employment. He submitted his resignation to the respondent on 8 September 2006

In cross-examination he stated that he was a manufacturing engineer for three and a half years and

he loved his job. One employee moved from the shop floor to Newcastle. Asked if he spoke to anyone regarding his position and what would happen to those who had not transferred he responded he did not have a conversation with anyone regarding his position in the company. He received his payment from Upright and he never signed anything regarding Tanfield. Asked when he sought alternative employment he responded a month before he left the respondent. He left the respondent on 22 September 2006. He commenced alternative employment as a production manager on or about the 28/29 September 2006. He had discussions with Tanfield regarding the transfer of undertaking and he could not move to Newcastle as his family were in Ireland. There was no position for him with the respondent and he was not offered alternative employment. Asked if he received anything in relation to his pension he replied there was a three-month period initially which could be extended to six months. He was not aware if anyone in Tanfield was doing the same job as him. He spoke to HR who informed him that they would talk to the general manager and he was informed that he was not entitled to redundancy.

The shop steward JOD told the Tribunal that at the time of the redundancies employees' pensions were frozen for six months. He spoke to the HR manager and he was requested to have employees sign a document objecting to the transfer from Upright to the Tanfield group until the transfer had been completed. This had to be signed so that all employees' pensions would still be paid by Upright until the transfer had been completed. He got the HR manager to change the wording of the document from refuse to object as he felt the word refuse was too strong a word. He asked staff to sign the document to protect their pension. Employees were aware that the respondent was moving to Newcastle.

In cross-examination he stated that the appellant left before the manufacturing in the plant in Ireland ceased. JOD remained in the respondent for six months and he was paid redundancy.

The manufacturing manager told the Tribunal he left the respondent in August 2004. The appellant undertook work as a manufacturing engineer in power drills. The respondent was quite unionised.

Redundancy was based on retaining skill sets. He was not involved in discussions about redundancy and he left in 2004.

Respondent's Case

The operations manager since 2004 told the Tribunal he was employed with the respondent for twenty-eight years. He did not have many dealings with the appellant but he had a good relationship with him and he was familiar with the work that he undertook. The appellant was excellent at his job, very diligent and an excellent timekeeper. When Tanfield offered to buy the power part of the business it was going to relocate to a new company and eventually transfer to Newcastle. On the shop floor the transfer affected thirty four to thirty eight staff. Thirty-four employees were made redundant and these were voluntary redundancies. The appellant sought redundancy after he handed in his notice. All general operatives were made redundant. He verbally informed the appellant that he had a position for him as a manufacturing engineer in ATS going forward and that is why the respondent refused to give him redundancy. The respondent had no intention of making the appellant redundant. HR did not notify the appellant in writing of the job offer. He felt that the appellant was positive about the position at the time, but he did not accept it. The appellant would have been expected to take up the position as manufacturing engineer at the end of 2006. The appellant left as he obtained another position in Portarlington. The position of manufacturing engineer was filled in February 2007.

In cross-examination when asked if employees who did not move to Tanfield received redundancy

he responded that the engineering manager and the production manager did not receive redundancy. Employees who worked in accounts and the spare parts department received redundancy. Thirty-four employees and eight office staff were made redundant. The other side of the business employed sixty to seventy. Sales staff as well as technical back up staff were made redundant and redundancy was voluntary. In May/June 2006 he offered the appellant a job in a different part of the business, which the appellant expressed an interest in, but Tanfeld had not made it clear to the appellant what they wanted him to do.

Asked what authority had he to offer the appellant a job he responded he was operations manager and he hired and fired staff. He discussed the matter with the general manager and HR. The appellant was one of the employees who the respondent wanted to retain. The respondent did not want to make the appellant redundant.

Closing Submissions

The representative for the respondent stated that the appellant left his job to undertake another job. The respondent had to replace him as a manufacturing engineer, which was filled the following February and he therefore cannot claim redundancy.

The appellant stated that he had no alternative but to leave and he was not offered alternative employment.

Determination

By majority decision the Tribunal find that the appellant is entitled to his redundancy under the Redundancy Payments Acts, 1967 to 2003 based on the following criteria: -

Appellant's date of birth	29 March 1972
Date employment commenced	20 January 2003
Date employment ended	22 September 2006
Gross weekly pay	€895.00

Please note that a statutory weekly ceiling of €600 applies to payments from the Social Insurance Fund.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

