

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

2 Employees

CASE NO.

UD294/2007

UD292/2007

against
Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms M. McAveety

Members: Mr. M. Flood
Mr P. McAleer

heard this claim at Cavan on 4th March 2008

Representation:

Claimant(s) : Mr. Declan Ferry, Assistant Organiser, SIPTU, Ashe Street, Cavan Town, Co. Cavan

Respondent(s) : Mr John Barry, Managing Director, Management Support Services (Ireland) Limited,
The Courtyard, Hill Street, Dublin 1

The determination of the Tribunal was as follows:-

Claimant's Case:

The first named claimant gave evidence. He stated that he had commenced employment with the respondent in October 1999 in curtain assembly. He explained that for the first six months of his employment he had used different machinery. Over the years there had been a large changeover in staff and the claimant had trained some of them, including one colleague (known as GOR).

In March 2007 he returned from annual leave. His son informed him that staff had been laid off from the respondent. He went into the town and met a colleague who informed him that he, the claimant, had been let go. The following Monday he attended work as normal to find his clock card missing. He approached one of the Supervisor to ask what was going on but was told he did not know but said that he would sort the claimant out by clocking him in at 8 a.m. He was later told that the Managing Director (known as MD) wished to speak to him in the office. The witness said that he wanted a union representative present. They attended MD's office. They were informed that the respondent was in financial difficulty and the claimant's name was on a list of staff that were to be made redundant. The claimant asked why he had been chosen as he had more service than some of the other staff. MD asked him what his skills were and asked him to sign some papers. The claimant refused. MD told him to leave the premises. The union representative tried to reason with MD but to no avail. The claimant stated that he did not even get the chance to say goodbye to his colleagues or retrieve his belongings.

When asked he said that the reason, he felt, he was let go and GOR was not was because of GOR's

previous employment. He explained that the respondent had taken over another company and the staff that had transferred to the respondent from this company had an agreement that if they were to be made redundant, a package of five weeks per year of service plus their statutory entitlement would be paid to them. The original staff employed with the respondent did not have this agreement available to them. When asked, the witness stated that he had received statutory redundancy.

On cross-examination he stated that he had worked “on the table”. GOR and himself made curtains. He stated, when asked, that he had worked in other departments of the respondent. Staff were known to move jobs if required. When asked if he knew GOR could weld, he replied that he had never seen him to do it. When put to him he accepted that he did not have any welding skills.

When asked by the Tribunal if there had been a letter concerning his redundancy waiting for him on his return from leave, he replied no. When asked, he said no one senior to him was let go. When asked, he stated that no staff with the enhanced redundancy package available to them were let go.

The second named claimant gave evidence. He explained that he had over three years experience as a welder with the respondent but had worked in other departments.

On March 2nd 2007 he attended work and heard that people were being let go. The Production Supervisor asked the claimant to go see MD. His union representative was not present at the meeting. MD informed him that his name was on the list of staff that were to be made redundant. He enquired about people who had less service than him. He was asked to sign some papers, which he did after some time.

On cross-examination he stated that he had worked in other departments. When asked by the Tribunal, he stated that staff with less service than him had remained with the respondent. When asked, he said that he had no time to discuss the matter with his union representative before signing the papers. When asked he said that he had received statutory redundancy.

A former colleague and original employee of the company the respondent took over gave evidence on behalf of the two claimants. He explained when his original employer had been taken over the twelve or thirteen employees carried their original terms and conditions with them. When asked, he explained that he was the union shop steward. He stated that he had not been trained to work in any other department and stated that the first named claimant was more senior and skilled than him.

On cross-examination he stated that occasionally worked “on the table”. When asked he stated that he would not be aware of the skills some other employees had. When put to him that service did not mean people were better skilled he agreed.

When asked by the Tribunal, he stated that as shop steward he had no prior knowledge of a redundancy situation and was not informed of the selection process. No staff from his original employer were made redundant.

Respondent’s Case:

The Managing Director (MD) and shareholder of the respondent gave evidence. He explained that he had been twenty-five years in the business.

In 2002 his company took over another company and some of their staff transferred to the respondent company. At first all went well but then business deteriorated. By June 2006 the respondent had made a loss of over € 370,000. He met with the Financial Advisor to try and sort it out. It was agreed to carry on for another six months and then review the matter again. The witness told the Tribunal that himself and the other co-owner ploughed €100,000 into the company. In November 2006 meetings were held with the banks and it was agreed to defer some payments for a period of twelve months.

In February 2007 the reviewed accounts showed that the company was in a worse position. There was a loss of €149,000. The banks threatened to close the company down if something was not done. The witness said that they had no choice as the company needed a saving of €11,000 a month. The company was reviewed as a whole. The witness and the co-owner ploughed more money into the company and it was decided that staff would have to be let go. Both owners decided who would be made redundant. When asked he stated that the least skilled staff were let go. There was “a gun to their heads” and had no time to train staff. He explained that for the company to move on they needed skilled staff.

The announcement was made on July 2nd 2007. The witness said that it was a very emotional day. He stated that it would have been preferable to give more notice to the staff that were made redundant but there had not been enough time. If there had been no redundancies the company would have closed.

When put to him he said that he was aware of the union agreement of last in first out but they had not had the time to go down that route. When asked by the Tribunal he explained that both he and the other co-owner took a cut in salary and had no pension. When asked what investigation of staff skills he carried out, he replied that they reviewed a list the company had of staff and their skills. When asked he said that no permanent staff were taken on after the redundancies.

The Financial Advisor and chartered Accountant gave evidence. He explained that he had attended meetings with the respondent's bankers and renegotiated payment terms in November 2006 after substantial losses had been revealed in June 2006. More losses were realised in February 2007. He again met with the respondent's bankers but they refused to fund more money into the company. He was informed unless money was lodged into the company accounts, no cheques were to be issued. When asked he said that there was only a matter of days to decide who was to be made redundant.

When asked by the Tribunal he stated that when the two companies amalgamated in 2002 there had been a boom in the country but sales had not come through with the take over. The witness stated that the company the respondent had taken over had misrepresented themselves. He stated that there should have been a turnover of € 10 to € 12 million but there had only been a turnover of between € 6 to € 7 million. He explained that, to date, the respondent was still struggling.

Determination:

Having heard the evidence adduced on behalf of both claimants and the respondent's witnesses the Tribunal finds that the respondent did not consult the claimant's union sufficiently in order to give opportunity to let the claimants discuss the selection process for redundancy with their union.

Section 63 (b) of the Unfair Dismissals Acts states:

(3) Without prejudice to generality of subsection (1) of this section, if an employee was dismissed due to redundancy but the circumstances constituting the redundancy applied equally to one or more other employees in similar employment with the same employer who have not been dismissed, and either –

(b) he was selected for dismissal in contravention of a procedure (being a procedure that has been agreed upon by or on behalf of the employer and by the employee or a trade union, or an excepted body under the Trade Union Acts, 1941 and 1971, representing him or has been established by the custom and practice of the employment concerned) relating to redundancy and there were no special reasons justifying a departure from that procedure, then the dismissal shall be deemed for the purposes of this Act, to be an unfair dismissal.

In the circumstances the Tribunal finds that both named claimants were unfairly dismissed and awards the following amounts under the Unfair Dismissals Acts, 1977 to 2001:

In respect of the first named claimant, the Tribunal awards the sum of € 30,000. In the respect of the second named claimant, the Tribunal awards the sum of € 4,800.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)