

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee

RP620/2007
UD1086/2007
MN840/2007
WT364/2007

against

Employer

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001
ORGANISATION OF WORKING TIME ACT, 1997
REDUNDANCY PAYMENTS ACTS, 1967 TO 2003
UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr P. Pierce
Mr. J. Dorney

heard this claim at Dublin on 1st April 2008

Representation:

Claimant :

Ms Mairead McKenna B.L., instructed by Barry Collins & Company,
Solicitors, Greenside House, Cuffe Street, Dublin 2

Respondent :

Mr Frank Drumm B.L., instructed by Roche & Co., Solicitors,
Vevay Road, Bray, Co. Wicklow

The determination of the Tribunal was as follows:-

Respondent's case:

The respondent company was founded in 2000 and had been very successful. In 2007 its main client reduced its orders resulting in the respondent forecasting losses in income. In an effort to keep these losses below €5m, shareholders funds were used and staff were made redundant. In the first six months of 2007 they had lost a number of staff, twenty-three in total. The business

was going through drastic changes and there was a transition period where employees were leaving and were not being replaced. During the re-structuring process it was found that redundancies were necessary and the Tribunal was told of the grades of staff where redundancies were applied. At this time the respondent had two product lines and one of these did not sell.

The process used in selecting staff for redundancy was based on the relevance of the work at the time and they used a template in relation to qualifications, skills and disciplinary record. Three years prior they had a pay freeze and twelve staff were made redundant. They never used the L.I.F.O. i.e. (last in first out) system in redundancy selection. The claimant was employed as a senior control electronic engineer and was one of two at this level. The claimant was a very good employee. Five out of one hundred and one employees including the claimant were being made redundant. The five were notified on the same day and the respondent offered to explain their rationale. The claimant's employment ended on 15th June 2007. He asked if he could keep his laptop but did not say that he was snowed-under with work.

The respondent's plan was to secure more business and two to three months later they had two potential customers one of which was large. Staff were told they may get further business and the managers drafted applications for potential jobs. They did not re-advertise the claimant's job. The position advertised was that of junior electronic engineer. The claimant is highly specialised and it would be very difficult to replace him. The claimant has the ability to design machines and could design the structure for machines to meet EU standards in addition to programming robotics and other electronic devices. They advertised for a control engineer in August 2007 but this was not the same job as that of the claimant, it was a more junior position.

In cross-examination when documentation was requested to support the financial position of the company witness did not have these documents at the hearing. Neither did he have the template used for the redundancy criteria or the minutes of the meetings in coming to the decision to make the claimant redundant or a note of the meetings with the claimant. There was no other position available for the claimant and the purpose for the redundancies was to reduce the salary bill.

In answer to questions from Tribunal members witness said they were launching a new product that the other engineer had worked on and it would have taken the claimant two to three months to familiarise himself with this product.

Claimant's case:

The claimant is a senior engineer and worked with the respondent for six and a half years. His role for the respondent was project based and he outlined his job specifications to the Tribunal. When he saw the position advertised on the web site he was flabbergasted as he was looking at his own job. The job advertisement stated that four to five years experience was needed. Control engineers are difficult to find. There was no indication from the respondent in relation to redundancy, no communication with the employees and there were no meetings to say that the company was in trouble. He was busy for the six and a half years that he worked with the respondent and he went that extra ten miles for the company working long hours. He was very busy all through 2007 and it would have been difficult for a new person to take over at that time. His job was similar to that of the other engineer and he would be competent to cover his work. Prior to his redundancy the claimant stepped in to the other engineers' job while the engineer was on holidays.

On 15th June 2007 the claimant was called to a meeting and told his position was being made redundant. This was totally out of the blue and he was shell-shocked. The selection criteria was not

discussed and neither was there a discussion on alternative positions in the company. He was just told that his job was gone. He was then told that his date of termination was 29th June 2007 but that his redundancy was conditional on his leaving that day i.e. 15th June. His redundancy form was not ready that day and he was asked to call back to collect it the following week which necessitated a fifty mile around trip. He and his wife were due to go on holidays and they went as planned. He had never previously been out of work and he outlined his efforts to seek other work. He obtained alternative employment on 5th September 2007 at a lower salary. He was also due a salary raise around the day his employment was terminated. The position as advertised was his job and he has seventeen years experience in addition to having a degree and masters qualification. He could not believe that a person with four to five years experience could do that job. There was a lot of work to do in the respondent company after he had left and employees were being asked to work weekends.

In cross-examination the claimant said that while his current job is located close to his home he now has to work shift hours.

In answer to questions from Tribunal members the claimant said he had no idea why it was he who was made redundant and not the other engineer. It would have been extremely difficult for the other engineer to take over his workload along with his own tasks. His statutory redundancy was calculated up to 15th June 2007 and he was paid two months pay in lieu of notice.

When the parties were asked their preferred remedy counsel on behalf of the claimant stated that the claimant wished to be re-instated as he loved his job and he would not have to work shift hours. Counsel for the respondent said he was in the Tribunal's hands.

Determination:

The respondent's case is that because of a downturn in business especially from one particular customer they had to reduce the number of people employed. Because of this and the restructuring process which they were going through the claimant's position had become redundant. Evidence was given that the process used in selecting staff for redundancy was based on the relevance of the work at the time and they used a template in relation to qualifications, skills and disciplinary record. Evidence was given that at this time five employees out of a total of one hundred and five were made redundant. The claimant was one of the five made redundant. The respondent was unable to supply any documentation to support the perilous financial position of the company. Neither was the respondent in a position to furnish the template used for the redundancy criteria or the minutes of the meetings in coming to the decision to make the claimant redundant or a note of any meetings with the claimant. According to the respondent there was no other position available for the claimant and the only reason for the claimant's redundancy was to reduce the staff costs.

The claimant gave evidence that he was employed as a senior control electronic engineer and was one of two at this level. Prior to the 15th June 2007 when the claimant was advised that his position was being made redundant he had not been given any indication from the respondent in relation to redundancy nor was he advised that the company was experiencing financial difficulties or invited to meetings to discuss the position. The selection criteria was not discussed with him and neither was there any discussion on alternative positions in the company. He was just told that his job was gone. He was then told that his date of termination was 29th June 2007 but that his redundancy was conditional on his leaving that day i.e. 15th June 2007.

The Tribunal is not satisfied that the respondent acted fairly and reasonably when addressing the need to reduce the number of employees. It is common case that there were no meetings with the

claimant, no prior indication of the financial difficulty in which the respondent found itself, no discussion in relation to the criteria used for selecting the claimant nor was there any discussion with him about the claimant's suitability for an alternative position.

By majority decision with Mr. Pierce dissenting, the Tribunal determines the claimant was unfairly selected for redundancy. When the claimant and respondent were asked for their preferred remedy, in the event of the claimant being successful in his appeal, the claimant's preferred remedy was reinstatement while the respondent left the remedy in the hands of the Tribunal.

Because of the circumstances of this case and the fact that the respondent gave evidence that the claimant was a very good employee this Tribunal by majority determines that reinstatement is the most appropriate remedy.

No award is being made under the Redundancy Payments Acts, 1967 to 2001 or the Organisation of Working Time Act 1997. The claim under the Minimum Notice and Terms of Employment 1973 to 2001 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

