

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
Employee

CASE NO.
UD914/2007

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

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr. C. Ormond
Mr P. Trehy

heard this appeal at Dublin on 14th April 2008

Representation:

Appellant(s) :
Mr John Murphy, SIPTU, Liberty Hall, Dublin 1

Respondent(s) :
Mr. Joe Bolger, ESA Consultants, Novum Building, Clonshaugh Industrial
Estate, Dublin 17

The determination of the Tribunal was as follows:-

This claim came before the Tribunal by way of an appeal by an employee against the recommendation of the Rights Commissioner in the matter of Robbie Kelly and CLG Developments Ltd. (Ref:r-047682-ud-06/TB).

Respondent's case.

The first witness confirmed that she was the Human Resources Manager and gave evidence that the company wanted to create a fair, transparent system in dealing with a selection process for redundancy. Accordingly the company drew up a matrix system identifying aspects of employment including welding skills and follows a system of allocating points to employees based on those identified aspects of their employment. They consulted with the trade union who reacted positively and had an input into how the system could be altered or improved upon. This matrix system was used prior to the claimant's selection for redundancy and is currently in use.

The total score for the claimant was the lowest in the welding group and therefore he was selected

for redundancy.

The second witness gave evidence that he is employed as a welding inspector. He has worked for the company since June 2000. Bord Gais is one of its major clients and the company has a number of contracts with them. One such contract is for fabricating and fitting gas works. When this contract expires the company has to re-tender for the contract. To be successful the company had to test their welders to ensure that they achieved a specific standard as required by Bord Gais. The test had to be witnessed by an independent third party.

The claimant completed the test in September 2005. There were four parts to the test and the claimant passed two parts and failed the other two parts. The claimant was given the opportunity to re-sit the tests in March 2006. He failed the two parts to the test that he had originally failed and could not continue to work for the company with the qualifications he had.

Claimant's case.

The claimant gave evidence of being made redundant on 23rd June 2006. He was based in the company's workshop for the last two years of his employment and was provided with a company van by his employer. The use of this van by him resulted in points being unfairly deducted from him in the matrix system introduced by the company as part of the selection process for redundancy. There were also other aspects to the matrix system that was unfair to him. He felt he was being railroaded out of the job and the company had upped their requirement standards.

Under cross examination the claimant gave evidence that he had never been disciplined by his employer and was never warned about his timekeeping. He was always a good attendee when fit for work but was told that he was off work more days than other welders. He did not make any attempt to secure employment until after Christmas 2007 and did not register with FAS. He acknowledged that he had received and cashed the redundancy cheque issued by the company.

Determination

The claimant was dismissed from his employment by reason of redundancy. The respondent was reducing its workforce due to a reduction in business. The respondent produced a matrix to assist it in deciding on which employees were going to be selected for redundancy. The claimant's union was consulted about the criteria being used in the matrix but this is not to say that the union accepted or approved all the factors being used in selecting employees for redundancy.

The second witness for the respondent gave evidence that Bord Gais was one of its major clients and the company has a number of contracts with them. One such contract is for fabricating and fitting gas works. When a contract such as this expires the respondent has to re-tender for a new contract. In order to give itself a chance of retaining this business the respondent has to test and re-train its employees to ensure that they achieve the specific standard required by Bord Gais. The claimant passed two (out of four) tests which he undertook in September 2005. In March 2006 he was given an opportunity to re-sit the two tests that he failed but unfortunately the claimant also failed the repeat tests.

The claimant was kept informed of the perilous state of the company business through meetings, letters and some discussion with the claimant's trade union representative. While the factors used in the matrix may not be perfect the Tribunal can find no evidence that the respondent acted

unreasonably in selecting the claimant for redundancy especially given the fact that the claimant had failed on two occasions to pass tests which were of vital importance to the respondent's ability to compete for the Bord Gais business.

Having heard all the evidence the Tribunal determines that the claimant was not unfairly dismissed and upholds the decision of the Rights Commissioner. Therefore the claim under the Unfair Dismissals Acts 1977 to 2003 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

