

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
Employee

CASE NO.
UD90/2008

against
Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr D. Hayes

Members: Mr M. Kennedy
Mr F. Barry

heard this claim at Naas on 6th May 2008

Representation:

Claimant(s) : In Person

Respondent(s) : Ms. Mairead McKenna BL instructed by BCM Hanby Wallace, Solicitors, 88
Harcourt St, Dublin 2.

Respondents Case:

The first witness for the respondent gave evidence that he was a civil engineer and was contacted by the company's accountant in June 2006 to look at the company as it was not profitable. He had 30 years experience in construction and had previously brought companies that were in receivership and turned them into successful companies. When he joined the organisation the company was manufacturing nine different products of which only two were profitable. He examined every process and discovered that materials were scattered all over the site and that all stages on the production line and manufacturing line were badly managed. There was no building for stores and the claimant was based on the factory floor operating the stores. He decided that virtually everything in the factory had to be changed.

He introduced new processes and reduced the amount of stock held from €750,000 to €150,000. There was a four fold reduction in the amount of stock held and wastage was also reduced. A decision was taken to close down the night shift as figures that were being produced were abysmal. This decision resulted in approximately 20 employees being made redundant. In November 2006 the stores function was reorganized and the position of stores person became redundant. This

function was absorbed by a planner and a purchaser. The company has not employed a storeperson since December 2006. Productivity in the company has increased as manpower has decreased and the whole exercise was carried out to make the company profitable.

The claimant was offered a position on the production line and did not accept this position. Every entitlement was paid to the claimant including two weeks notice and his holiday entitlements.

The second witness gave evidence that he was employed as production manager since 2005. He had two meetings with the claimant in November 2006. The Health and Safety officer was present at those meetings. Future plans for the company were discussed at those meetings and the claimant was offered positions on the production line. The claimant was not interested in the new positions stating "that's a young man's position".

A further meeting occurred on the 8th December 2006. Present at that meeting were the claimant, the production manager and the health and safety officer. The claimant was again offered a position on the production line. The claimant did not accept the offer and said he was going to work out his notice. The claimant did not work out his notice and had left the premises within a half hour of the conclusion of the meeting. The witness gave evidence that no minutes existed from the meeting and that no contract of employment or grievance procedures were in place when the claimant commenced employment in September 2005.

Claimants Case:

The claimant gave direct evidence that he never had a meeting with the production manager. He was not offered a job on the production line and never said that it was a young man's job. He does not accept that the function of stores person has been eliminated. He did not attend any meetings with the company concerning redundancies. On Tuesday morning the 12th December 2006 he reported for work and clocked in on. On doing so he was told by a work colleague that he was going to be sacked.

Since the termination of his employment with the respondent company he has been unemployed. He has applied for jobs in the post office as a sorter and as a janitor in the Adelaide and Meath Hospital. He was unsuccessful on both occasions. He did a FAS course from May 2007 until August 2007 in Ballyfermot and has received job seekers benefit from Social Welfare.

Determination

The determination of the Tribunal was as follows:-

The Tribunal is satisfied that a genuine redundancy situation existed. Notwithstanding the existence of such a situation, an employer must nonetheless dismiss his employees in a fair manner. The employee chosen for dismissal must be objectively and fairly selected and consideration should be given to redeployment.

The Respondent no longer had need for its two storemen and decided to make both redundant. However, the Claimant would have been suitable for other work within the company. In such a

circumstance he should not be considered for redundancy only in the context of the role that he actually performed.

The Respondent gave evidence that it had discussed the issue of redundancy with the Claimant and offered him alternative employment, which he rejected. The Claimant gave evidence that no such discussions took place and that he was not offered any alternative employment. The third employee that, on the Respondent's evidence, attended the meetings was not called to give evidence and no minutes were produced to evidence such meetings. It is for the Respondent to discharge the onus of proof. In the circumstances, the Tribunal is not satisfied that the Claimant was fairly selected for redundancy and he was therefore unfairly dismissed.

In respect of his claim pursuant to the Unfair Dismissals Acts, 1977 to 2001 the Tribunal awards compensation to the Claimant in the amount of €15,000.00.

The determination of the Tribunal was as follows:-

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

