

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO. UD1057/2007

against
Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr E Murray

Members: Mr J Hennessy
Mr J McDonnell

heard this claim at Clonmel on 28th July 2008

Representation:

Claimant: Mr Brian Sugrue BL instructed by Ms Elizabeth Enright Solicitor
Lees Solicitors, Lord Edward Street, Kilmallock, Co Limerick

Respondent: Mr John Farrell, IBEC
Confederation House, Waterford Business Park, Cork Road, Waterford

The determination of the Tribunal was as follows:

This case came before the Tribunal by way of a claim for unfair dismissal arising out of the termination of the employment of the claimant, a Production Shift Supervisor, on the 25th of May 2007.

The General Manager (GM) gave evidence on behalf of the respondent company. GM outlined that it was the wish of his parent company and indeed himself to introduce a 'lean manufacturing' methodology to the business. The business itself was expanding, taking on new product lines and, at the time of the dismissal, employed over a hundred people, including two shift supervisors, of whom the claimant was one.

He gave evidence that part of the restructuring was the appointment of a Module Manager. This role would encompass the jobs that the Production Shift Supervisors had been doing and would take certain other responsibilities off GM who found himself considerably over-worked at that time.

He said that the company decided to progress the restructuring and that the claimant was offered three options:

1. To apply for the role of Module Manager, although GM was very frank in indicating that it was never likely that the claimant would be given this role and indeed he gave evidence that

he had advised the claimant of this.

2. The second option was of re-deployment to the position of Production Engineer or Continuous Improvement (CI) Engineer.
3. The third option would be Redundancy.

GM gave evidence that it was never intended that anyone would lose their job over the restructuring. The position of Module Manager was advertised internally and externally and GM envisaged appointing somebody who had a good knowledge and experience of lean manufacturing. The other Production Shift Supervisor accepted re-deployment but the claimant opted for redundancy. He was paid statutory redundancy plus five weeks for every year that he was employed. The claimant had no further discussions with GM about the situation and at all times the witness was convinced that the claimant was satisfied with the redundancy.

Under cross-examination, GM acknowledged that the claimant had been employed for five years, that he was competent, obliging and an exemplary employee. He felt, however, that he was not suitable for the position of Module Manager. He said that the other Shift Supervisor was not in anyway compensated for his change in role. It was put to GM that, subsequent to the departure of the claimant, another employee who had previously been Line-Leader was promoted to the claimant's job. GM said that any change in the role of that individual came much later and that that individual's role description and salary remain the same. When pressed on the role of Module Manager, and the reasons that the claimant was not suitable for it, GM indicated that the role involved experience in operating a manufacturing operation and an experience of lean manufacturing. He denied having a conversation with the claimant, in which he said to the claimant "I see no option for you but redundancy".

The claimant gave evidence on his own behalf, indicating that two years prior to his departure, restructuring was under discussion. He remembered being at a management meeting in January / February of 2007 where the issue of bringing in a Module Manager was first discussed. He also remembered having a brain storming session and ultimately saw the first draft of the new restructuring plan and he was alarmed to see that there were no supervisors provided for in that plan. He asked GM what was going to happen. He remembers that GM responded "I see a person on day shift, that the two shifts will report to. That person is in this room". The claimant took this as a reference to himself. He was reassured by this and saw it as a fall back position for him. It was indicated to him that whereas he could apply for the position of Module Manager, he wasn't likely to be successful. He was told that this was a bigger role than what he occupied and was for somebody who was experienced in Lean Manufacturing. He had done a four-day course in lean manufacturing and he felt that he had the qualifications. Nonetheless, it was made clear to him that he was unlikely to be successful in his application. Some weeks passed and no offer of a CI role came his way and he had no further communication from management. He never received any job offer and he spent weeks going to the HR office but no one ever came back to him. The more he thought about it he felt that his only option was redundancy.

He remembers having a conversation with GM where GM said to him that he would have to be gone by June. He started looking for jobs and asked for time to find something. Eventually he got an alternative job, but on a lower rate of pay.

Determination:

The Tribunal, having considered the evidence, is satisfied that no legitimate redundancy existed in the respondent company at the time of the claimant's dismissal. Indeed this company is a progressive company that was restructuring and apparently expanding both its product line and its turnover and new personnel were being brought in to fill certain roles. It is highly likely that, if proper consideration had been given to it, that a suitable position could have been found for the claimant and it is clear that during the course of the restructuring the claimant was the only person to, in fact, lose his post.

There is no doubt about the respondent's bona fides in relation to the restructuring and indeed MD himself indicated that he never intended that anyone would lose their jobs because of this restructuring. The onus was, however, on the employer to put proposals forward for the re-deployment of the claimant and they completely failed to do this. There were some discussions about various positions but no formal offer was ever made to the claimant. This may have been due to a simple breakdown in communication, however, the consequences of that breakdown cannot be visited upon the claimant.

Consequently the Tribunal finds that the claimant was unfairly dismissed and in the circumstances the Tribunal finds that compensation is the most appropriate remedy. The Tribunal makes an award of €37,500.00 to the claimant and directs that credit be given to the respondent for the sum of €32,627.75 paid in May 2007. The amount recoverable, therefore, shall be the difference between these two sums, which amounts to €4,872.25.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)