

## EMPLOYMENT APPEALS TRIBUNAL

Claims Of:  
Employee

Case No.  
UD743/2007

against  
Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr. J. Browne  
Mr. S. O'Donnell

heard this claim at Wexford on 8th July 2008

#### **Representation:**

Claimant: XXXX

Respondent: Mr. Dylan Redmond B.L. instructed by Mr. Tim Cummings, Kirwan & Kirwan,  
Solicitors, 4 Cornmarket, Wexford

#### **The determination of the Tribunal was as follows:**

##### **Respondent's Case:**

The Managing Director (hereinafter MD) gave evidence to the Tribunal. The respondent manufactures timber frame houses. The claimant was dismissed from the company by reason of redundancy. The claimant was employed from the 10 March 2006 to the 14 May 2007.

The claimant was employed as a workshop foreman and his functions included general overseeing. The claimant was a friend of the director and MD offered the claimant the position to oversee production. The claimant oversaw the workshop, quality, production, the yard and the loading of lorries. The claimant did not have an office role or a sales role in the company.

MD's expectation was that the claimant would increase output and manage the general running of the workshop. Only a small part of the claimant's role was concerned with health and safety as the company already had health and safety procedures. There were 40 employees in the factory when the claimant started work and the company had two premises. The claimant oversaw the workshops in both locations. Only one of the premises remains open. The claimant was not qualified to maintain machinery and he did not have a training role. The claimant had a small role

negotiating with suppliers but the claimant would have checked with MD regarding purchases. MD was in ultimate control of the business and he was at both premises on a day-to-day basis.

The company had 40 employees in March 2006. The number of employees increased slightly to 56 at the time of December 2006. However, there was a downturn in or around March 2006. A graph showing the number of units produced by the company between March 2006 and August 2007 was submitted to the Tribunal. MD stated that production peaked in November 2006 but declined after this time. Between February and March 2007, 14 employees who worked as general operatives were selected for redundancy through a last in first out process.

The claimant was subsequently made redundant on the 14 May 2007. MD selected the claimant after considering the claimant and two other employees. The claimant was selected for redundancy as he had the least service. The company employed another person in a general managerial position some time after the claimant was made redundant, however, the new employee's role was office based and the position was completely different to that held by the claimant. MD stated that he had considered alternatives for the claimant but these were unsuitable as the claimant could not have worked in an office and MD did not think the claimant would be interested in working as a general operative. MD did not discuss alternatives with the claimant.

The claimant did not inform anyone in the company that he was intending to take annual leave. There is a holiday board in the canteen and each employee writes their intention to take leave on the board. The claimant did not write his intention to take leave on the board. MD was considering the claimant for redundancy before the claimant went on leave. When the claimant returned from annual leave on the 14 May 2007 MD told him his position was redundant.

During cross-examination it was put to MD that the claimant's position was that of production manager. MD disputed this. There were three employees answerable to the claimant. These three employees now report to another member of staff.

It was put to MD that the company's document showed an increase in the number of units produced between March 2006 when the claimant commenced employment and May 2007 when the claimant's employment ended. MD replied that the workload had decreased and the claimant was made redundant as a result. It was put to MD that the company had advertised for staff in September 2007 and January 2008 "due to continued expansion". MD replied that the position in January 2008 was not filled.

It was put to MD that his brother had threatened to dismiss the claimant if the claimant did not take care of MD's dogs. MD said this was not a factor in selecting the claimant for redundancy.

Answering questions from the Tribunal, MD stated that the claimant "probably had" negotiated cheaper deals with suppliers.

MD considered making the claimant redundant from January 2007. He finalised his decision in or around the 9 May 2007. The company still needs a foreman but not to the same level as the claimant's position.

The respondent's office administrator gave evidence to the Tribunal that letter dated the 18 April 2007 was given in error to the claimant. MD instructed the office administrator to write to the claimant on the 14 May 2007. The office administrator copied and pasted from a letter dated the 18 April 2007 and gave this in error to the claimant. This letter set out monies owing to the claimant

for holiday pay and minimum notice.

The claimant only put his annual leave on the holiday board the week before he went on annual leave. When the office administrator saw this she asked the claimant if he had MD's approval. It is the office administrator's belief that the claimant went on annual leave without asking MD's approval.

The witness prepared a spreadsheet of employee names, which was submitted, to the Tribunal. The office administrator stated that the abbreviated "P" for the claimant's job title equated to the position of Production Foreman. The claimant was the only employee listed on the spreadsheet who held this position

Answering questions from the Tribunal the office administrator stated that she did not have any conversations with MD concerning the claimant's employment before the 14 May 2007.

### **Claimant's Case:**

The claimant gave evidence that MD employed him in March 2006 as a Production Manager. During his employment the claimant's aim was to increase production output. MD left the running of the factory to the claimant. The claimant had an office on the factory floor. The claimant changed suppliers and made the company substantial savings. The claimant stated that he was in total control of the business for MD, however he did not have responsibility for the clerical staff or the sales staff as MD remained in charge of these employees. The claimant carried out a health and safety review as the employees did not have protective clothing or other safety items. The claimant also inspected the machinery.

The claimant worked through the Christmas holidays in December 2006. In 2007 MD suggested to the claimant that the employees should take holidays in batches to allow the company to maintain staffing levels. MD wanted a holiday board displayed in the canteen to allow staff to write their holidays on this board. The claimant had his week's annual leave booked since December 2006.

The claimant attended for work on the 21 May 2007 on his return from holidays. MD told him in the canteen, "this is how I do things, I'm letting you go." The claimant asked MD why he was letting him go if he had just employed other staff. MD told the claimant that was different as the new employees were family.

The claimant gave evidence relating to loss.

During cross-examination the claimant stated that he gave direction to all the employees on the factory floor. The claimant and MD held the two managerial positions in the company.

It was put to the claimant that he was grossly overstating his role in the company. The claimant replied that the company's production improved with his help.

It was put to the claimant that the office administrator did not see the claimant's holidays on the board as far back as December. The claimant confirmed that he marked his holidays on both calendars in December 2006.

**Determination:**

The Tribunal having considered the evidence find that the claimant was not dismissed by reason of redundancy and the employer failed to discharge the onus of proof that a genuine redundancy situation existed. The respondent's evidence produced to the Tribunal did not disclose a downturn in business as alleged. There was a very large turnover of staff in the business but the claimant was the only employee working as a foreman. The evidence showed that the claimant's work after his dismissal was being done by a new person and that the main part of his function had been taken over by a person acting as an assistant foreman. The manner in which the claimant was dismissed was unfair in that it occurred on the morning after he had returned from holidays and without any consultation prior to that date. The Tribunal was aware that there had been an altercation between the claimant and the Managing Director's brother over caring for the Managing Director's dogs and the Tribunal considers that this was a factor in the dismissal. The Tribunal awards the claimant €15,000.00 under the Unfair Dismissals Acts, 1973 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)