

EMPLOYMENT APPEALS TRIBUNAL

Claim Of:
Employee

Case No.
UD834/2007

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 9th July 2008

Representation:

Claimant: In person

Respondent: XXXX

The determination of the Tribunal was as follows:

The Evidence:

The respondent is an insurance brokerage company with eight branches. The claimant was employed with the respondent since 1996. His first role was in sales and he was later promoted to team leader. In 1999 he was approached to take up the role of quality control and provide staff training, effective from January 2000. The claimant visited a number of the respondent's branches as part of this role. His role changed throughout the course of his employment. The claimant considered that he was part of the management team.

In 2005 a new finance manager commenced employment with the company and became the claimant's manager. The claimant compiled monthly sales reports and operational reports. The claimant raised a concern at one time regarding his position and he was reassured.

A witness for the company who provides part-time management support (hereinafter MS) gave evidence on behalf of the respondent that towards the end of 2004 the brokerage business was feeling the pressure of the decline in premiums. In 2005 the respondent closed one of its branches.

There were five people working there and three were transferred to other branches and two others left the company and were not replaced.

In 2006 the company informally reviewed its operations and a decision was taken not to automatically replace staff that left the employment of the company. However, this decision was insufficient to remedy the financial pressures the company was experiencing. In late 2006 management conducted a formal in-house review of all processes and expenditures. This review concluded in March 2007 and a number of strategies were adopted. One of the decisions taken was to reduce the number of positions in the company by seven. The company's employees mainly consisted of sales staff with the remaining staff working in administration. One of the positions selected was that of Quality Assurance which was the position the claimant held. The claimant's role involved a certain amount of verification of the company's systems, visiting branches, providing induction training and a small part of his role was IT work.

When management decided that the company had to carry out redundancies the decision was communicated to the claimant first, as his role was unique. He was spoken to before any other members of staff and within a week of management making the decision.

It was the claimant's evidence that in April 2007 the company had a drop in sales figures and posts were not filled when employees left the company. The claimant was at head office on the 10 April 2007 when he was given a message to speak to MS. However, as MS was in a meeting the claimant's manager spoke to the claimant. It was the claimant's evidence that his manager told him his job was gone and the company had nothing else to offer him. A severance package was outlined to the claimant and the claimant asked for the details in writing. The claimant subsequently received a letter on the 12 April 2007.

A further meeting was held on the 12 April 2007 with MS, the claimant's manager and the claimant present. MS and the claimant's manager explained the rationalisation process to the claimant and the contents of the letter of the 12 April 2007 were reiterated to the claimant. This included that the company had reviewed a number of processes and was re-structuring due to cost-saving measures. The claimant was offered a temporary position in systems support for three months on his current salary. The claimant in evidence said that the temporary role offered him would mean a loss in status.

The claimant was unhappy with the decision and wanted clarification on how management had reached its decision. As the claimant was the first person to be told about the redundancies the company could not give him details of all the redundancies, as the other employees affected had not been informed. The claimant asked questions about the other employees put forward for redundancy and how their positions were selected. He also had questions relating to the redundancy package.

The claimant told the Tribunal that from the delivery of the two meetings it was clear to him that it was already decided to make him redundant. He did not accept the temporary position offered to him as it was a loss of status and he felt it was not a reasonable alternative.

In letter dated the 24 April 2007 the claimant outlined the questions he had in relation to the redundancy and the proposed severance. The claimant's manager replied to him by letter dated 3 May 2007. This letter stated, *"In relation to your query on the selection criteria used in coming to the decision in relation to your role, a review of business processes was carried out with the aim of reducing cost. This resulted in several changes, with the responsibility of*

some functions previously carried out centrally now being distributed back to the rest of the business. The outcome of the above has been the decision to disband the rebroking team, the handing back of administrative and other duties such as a large part of the H.R. function to the branches along with the responsibility for quality and training also being handed back to the branches.”

The claimant had performed the human resources function. The branches were now doing the quality and training function that the claimant had carried out. During cross-examination the claimant did not accept that his role was fully split between the various branches.

The claimant did not accept the temporary position offered to him. In or around that time there were other job opportunities available in sales and some junior positions. The claimant was not offered a junior position, as the company believed that he would not be interested in them, as he had stated this at a meeting. MS stated in evidence that the claimant had told them he was uninterested in sales. The claimant in his evidence stated that he would have accepted a sales position had it been offered to him as part of his role was sales coaching and he had used the sales system. MS accepted the claimant’s role had changed throughout his employment but he had not worked in sales in the company.

In or around this time the company set up a new mortgage business and there were job opportunities, which the claimant and all employees were informed about. The claimant was open to applying for a position in this new business. The claimant was informed of the positions by email on the 4 May 2007. The claimant’s employment ended on the 21 May 2007 and he not apply for any of the available positions in the new company. The claimant stated in his evidence that he did not apply for the jobs in the new mortgage business as a mortgage advisor as the advertisement stated, “experienced mortgage advisors.”

Following the end of the claimant’s employment the company found that seven redundancies were not enough and the company revisited restructuring the company. A number of employees voluntarily left the company therefore the company made fewer employees redundant than expected.

During 2007 the company continued to labour under financial pressure and it continued to re-structure. There were approximately twenty redundancies and a small number of employees left the company’s employment of their own volition.

During cross-examination it was put to MS that when an employee is to be made redundant they should be consulted and offers of work discussed. MS replied that management had made a selection for redundancy but at all times it was stressed to the claimant that the positions were made

It was put to MS that in 2006 the claimant’s role changed and he became responsible for reporting to management and the directors, the claimant was also responsible for collating sales figures. MS stated that data is still collected but the branches and the manager have taken responsibility for the duties.

It was put to MS that the temporary position offered to the claimant would involve a loss of stature. MS replied that the position was reasonably senior and was on a par with the claimant’s position. It was put to MS that the claimant raised the position of Sales Account Executive with him as an alternative role when the position was advertised but that MS told the claimant that he would not be

considered for the role. MS did not recall this.

Answering questions from the Tribunal MS stated it was unnecessary to implement the other redundancies until August/September 2007.

Determination:

The Tribunal having heard the evidence in this case determines that the employer established to its satisfaction that a redundancy situation existed in the company. The claimant was offered a short-term alternative, which the Tribunal considered to be reasonable. In the circumstances the claim under the Unfair Dismissals Acts, 1977 to 2001, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)