

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD525/2008

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. P. McGrath

Members: Mr. R. Murphy
Mr. B. Byrne

heard this claim at Dublin on 9th September 2008

Representation:

Claimant: Mr. Justin MacCarthy, MacCarthy & Associates, Solicitors, 10 Upper Mount Street,
Dublin 2

Respondent: Mr. Aidan Redmond BL, instructed by: Ms. Lorraine Rowland,
Reddy Charlton McKnight, Solicitors, 12 Fitzwilliam Place, Dublin 2

The determination of the Tribunal was as follows:

Respondent's case:

The CEO (PM) gave evidence that he was a major shareholder in the company with 34 years experience. He said that many employees had to be let go due to the economic downturn. Some left voluntarily, others had to be made redundant. It was the first time in his life that he had to make people redundant. One such person was the claimant, whom he was due to meet on Friday 11 January 2008, but he was not well on the day, so he had a brief discussion with him about his redundancy, which was not ideal. He met him again on the following Monday, and the claimant gave him a list of issues which he agreed to sort out for him. He asked the claimant to work out his notice, but the claimant didn't want to do this. He met him twice that week, and he was let go the following Friday. The claimant gave him a list of payments due, which he honoured - except for one small change in holiday pay.

He said that he made it clear to the claimant that he was being made redundant. It became obvious that there were too many “number twos” in the company, and the claimant was the number two to the Finance Director (LR). He said that the claimant’s job was now done by The Finance Director (LR). The same situation regarding redundancy applied to other number twos’. He said that he tried his best to give the claimant what he asked for. The claimant is an excellent person, and he didn’t have a bad word to say about him.

He said that the claimant was appointed with the idea of him eventually becoming the Financial Director of the trading company, and he was given six months to familiarise himself with the job. He admitted that a contract for this position did not materialise. He said that they knew in December that cuts had to be made, but they didn’t want to burden the employees with this decision until after Christmas. They made the final decision to make the claimant redundant in the week commencing 4 January 2008.

He denied that the issue of redundancy was not raised at his meeting with the claimant. It was his error in not serving redundancy notice to him. He said that he had no other reason apart from redundancy to let the claimant go, in fact he dealt with four others on the same day in the same manner. He admitted that it was probably inappropriate for him to approach the Accountants pool in order to find another job for the claimant, but he was only trying to help him. In hindsight, he should have sought legal advice in going about the redundancy procedure. The claimant should have received a contract of employment, but he didn’t. He was asked was it possible that he had not used the word redundancy when he met the claimant, but he answered that he had definitely uttered it. He gave no other member of staff a redundancy package other than the statutory entitlement.

The Finance Director (LR) gave evidence that he was not a shareholder. He said that he had never spoken to the claimant about him (LR) leaving the company, and that he didn’t plan to leave until retirement. He thought that the claimant could have been good enough to replace him when he retired. The claimant was initially appointed as Financial Controller, but they hoped he would get the Director designate post eventually.

However, due to the economic downturn, they had to cut staff numbers, and the claimant’s role was an obvious one to be considered for redundancy. He said that he definitely used the word redundancy when he met him. He met him on Friday 11 January 2008, and the plan was to tell him the bad news, and to then bring in PM who would give him further details, but the claimant was ill and unable to meet PM, so he told him that they would have to make him redundant.

He said that the Finance Department was under severe pressure and had to let some people go. The final decision to make him redundant was made on 4 January 2008, and he was told this the following week on 11 January 2008. He said that he told the claimant that he was let go, and that he did use the word redundancy. As Finance Director he thought that the claimant should only be paid the statutory minimum, but the CEO wanted to pay him what he asked for, so he agreed. After he was paid, the claimant never mentioned anything to him about not being told about redundancy. There was no reason for the claimant to leave except by redundancy. He said that the claimant appeared to be surprised when he was told he was being made redundant. The company may not have been the best at conducting procedures correctly, but they tried to help everyone.

Claimant’s case:

The claimant gave evidence that he began working for the company in 2006. He said that he hadn't seen the advertisement for Finance Director, but was told that it could be a possibility to go for that job after six months or so. The company told him that he would be assigned as Finance Director/designate when he had completed his probation, but they kept putting this back. He said that he was told that LR was approaching retirement, so he could have his job. He was responsible for three credit controllers in the Finance Department and also had a HR recruitment role. In addition, he was on the Executive Committee, which included first and second level managers. At a meeting held around Christmas 2007, he said that he felt excluded from company decisions, and was told that he would be included. He had a number of discussions with PM about not receiving a contract of employment.

When LR told him that he was being let go he was amazed, and had believed that the company's costs would have been saved by another employee (MR) having been let go and not being replaced. He was also told that the Accountant's panel would be informed, in order for him to get a new job quickly. He couldn't believe that they would commit such a breach of trust as to contact the Accountant's panel. LR told him that they would only pay him the statutory minimum, but that if he wanted more, he would have to contact PM. The word redundancy was not used. He felt sick, so was unable to meet PM, and met him the following Monday. PM apologised for contacting the Accountant's panel. He prepared a list of payments, but PM wouldn't pay him three months notice, or a bonus. He said that he was unemployed for nine weeks. He is now working as a Financial Controller with another company, but for less money, so that there is ongoing loss.

He said that he knew that a reduction in the work force was a possibility, but he thought that the loss of MR was the Finance Department's contribution to this reduction. It didn't make sense to let him go. What he understood by being let go was that he was surplus to requirements and had to go. He was offered a reference but refused it.

Claimant's closing remarks:

Strict proof is required for redundancy. There is no evidence that the claimant was dismissed by reason of redundancy. He has now got a position which is not comparable with the one he held with the respondent, so is suffering ongoing loss.

Determination:

Having considered the evidence adduced, the Tribunal finds that a genuine redundancy situation existed in the workplace. Ultimately this finding is based on the uncontroverted evidence that the company was facing a downturn in profitability, and indeed the claimant himself accepts that there was an understanding in the workplace that cost challenges were being looked at. It is accepted by the Tribunal that where an employer is looking to make cost cuts, it does not take long before the issue of salaries & remuneration packages are looked at to achieve any overall reduction in costs.

The Tribunal fully accepts that the claimant himself believed he was immune from termination – his work was invaluable and accepted by everyone to be of the highest standard, he had only recently been given an exciting and promising promotion, and he genuinely believed that the Finance Department had already made its sacrifice.

However, the fact that the claimant did not anticipate the termination of this employment does not mean that he was immunised.

The Tribunal does have reservations at the lack of procedures adopted by the employer in the execution of this dismissal, but cannot accept that the words “ you’re being let go” against the backdrop of straightened financial circumstances could be interpreted as anything other than a redundancy situation.

The Tribunal cannot, in all the circumstances, find that this was a case of unfair selection for redundancy under the Unfair Dismissal legislation.

Therefore, the claim under the Unfair Dismissals Acts, 1977 to 2001, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

