

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee
- *claimant*

CASE NO.

UD1333/2008

against

Employer -*respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mrs. M. Quinlan

Members: Mr. M. Flood

Mr B. Byrne

heard this claim at Dublin on 14th April 2009
and 3rd June 2009

Representation:

Claimant: In Person

Respondent: Ms. Breda O'Malley, Hayes, Solicitors,
Lavery House, Earlsfort Terrace, Dublin 2

The determination of the Tribunal was as follows:-

Respondent's Case

The Tribunal heard evidence from the financial director of the respondent company (mechanical and electrical engineering consultant type company). The witness gave evidence as to the finances of the company. Projects were being delayed or postponed. Their fees were halving and there was a shortfall in income. In or around August or September 2008 they had sixty staff and at the present time they had forty-five staff.

The management knew that they could not maintain the staff levels. They considered short weeks or week-on week- off work options for the employees. They considered redundancies. Then towards the end of August 2008 they felt that it was to be a short week for staff as well as redundancies. Towards the end of September they stopped all bonuses from the directors down to the administrative staff. They determined which projects were to continue or to start, and what staff that they needed to retain.

They had a meeting with the staff on 2nd September 2008 and told them the situation. They asked

the staff if anyone wished to be considered for voluntary redundancy. One employee did ask for this and she was facilitated. In mid December they decided that they had to cut the staff level.

The witness described the reasoning or criteria that they used for selecting the redundant areas. He explained that the claimant came into the category that they looked at, i.e. the stage that claimant's workload was at and the impact on the client. They sought the opinion of all of the section heads regarding the redundancies.

The witness then went on to give detailed evidence as to why they retained other senior staff and not the claimant. He gave evidence as to what the claimant's work was at the time.

The chief executive of the company gave evidence that they employed five mechanical engineers and it was necessary to make two of them redundant. The criteria for redundancy was based upon current workload and client impact. It was also based upon the complexities of the projects and the stages of the projects. The claimant's workload was basically completed or not processing and the other person's projects that was selected for redundancy were also virtually complete.

Claimant's Case

The claimant gave direct sworn evidence that he was employed as a senior engineer with the respondent company and was selected for redundancy without fair, proper and transparent procedures being followed. The selection criteria was not made known to the employees and the company was not willing to explore other avenues such as temporary lay offs, or shortened weeks. The possibility of him working for a lower salary was not explored either. There was no consultation with employees and there was a lack of transparency. The respondent never explained to him why he was selected for redundancy, he felt as though he was being victimized and he was denied an equal opportunity for promotion. There were elements of bias in the selection process. Two other employees who joined the company after him were promoted to associate directorship level and he was denied that opportunity.

The witness gave further evidence that his work conditions were not perfect. He was working beside a photocopier located about a half a metre from his desk. He kept getting headaches from the noise of the photocopier and complained to the respondent about this, requesting that a screen be put between his desk and the photocopier. The respondent did nothing regarding his complaint and this lead him to the conclusion that he was being treated unfairly. He had more project design experience than other engineers and this was known by the respondent. When he was made redundant he had a full workload on various projects. He was eventually made redundant on the 21 November 2008.

Under cross examination he agreed that there was a peak in business in 2006 and in 2007 and 2008 business dropped off from the peak of 2006. He confirmed that he did not respond to the company's invitation to explore alternative options after the 22 September 2008. He attended a management meeting on the 29 September 2008 which lasted approximately 5 minutes, and the redundancies were announced at that meeting. He agreed that there was no contractual commitment in place for him to be appointed as an associate director.

In reply to questions from the Tribunal he accepted that the company experienced a downturn in business since 2006 and that his contract of employment does not lay down specific criteria that must be followed in a redundancy situation. It was very important for him that he remained in employment as he was employed on a work visa, and had a specified status in the country based on

the fact that he was in employment. The company initially specified that there would be a total of 15 redundancies but this figure changed to 14 when the process was completed.

Determination

The Tribunal having carefully considered the evidence from both parties is satisfied that a genuine redundancy existed. The Tribunal is also satisfied that the selection process for redundancy was fair and reasonable, and find that the claimant was not unfairly selected for redundancy. The Tribunal unanimously finds that the claim under the Unfair Dismissals Acts 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

