

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD36/2009

against

Employer
under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr T. Ryan
Members: Mr J. Goulding
Mr S. O' Donnell

heard this claim at Dublin on 28th May 2009

Representation:

Claimant : In person

Respondent : Mr. Tim O'Connell, IBEC, Confederation House,
84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

Claimant's Case

The claimant commenced employment with the respondent in spring 2005. At that time he resided in Newbridge, county Kildare and worked at the company's depot at Naas. In the summer of that year he transferred to another depot at East Wall Road, just north of Dublin's city centre. That plant was due to cease operations and close down by 1 September 2008. The witness insisted his move there was based on a promise from the respondent that he would be offered the position of plant manager of a new depot close to Blanchardstown in west Dublin.

In early 2008 the respondent's operations manager informed the claimant of a difficulty regarding that promise. The witness was told that the plant manager in Blackrock, county Dublin was threatening to leave the company unless he was given the position of plant manager in Blanchardstown. The claimant was then invited to take up the position of manager at the Blackrock depot. This offer was not acceptable to the claimant not least due to a broken promise and commuting reasons. In a series of meetings he advised the operations manager of that attitude. Aware that the East Wall plant was closing down the claimant sought a transfer back to Naas, he also told the operations manager that he was looking for alternative work and had indeed been offered a job elsewhere. However, the witness emphasised that at no stage did he tell that manager that he was actually leaving.

When it was made clear to the claimant that he would definitely not get the position of plant manager at Blanchardstown nor a transfer back to Naas he responded that he would therefore

remain on at East Wall until the plant there closed. In late June the witness was called to the office of the operations manager and presented with an Employee Termination Notice form. According to the witness the operations manager told him that it would be better that he leave the company sooner rather than later. Being shocked and surprised at this development and not knowing what to do the claimant duly signed that form. On that form he indicated that he was leaving the respondent of his own accord.

The claimant received very short notice of this meeting and was not given any indication as to the nature of it. The operations manager mentioned that rumours were circulating in the plant about the status and plans of the claimant. This appeared to be the stated reason why the claimant terminated his own employment. Some five weeks after his departure from the respondent the claimant received a call from the operations manager inviting him to apply for the position of plant manager at Blanchardstown. The new position was given to the former Blackrock manager.

Respondent's Case

The operations manager who was responsible for several of the respondent's plants said that the company solely relied on the construction industry for its business. Their depot at East Wall Road was due to close in early autumn 2008 while a new plant was scheduled to open at Blanchardstown shortly after that time. The claimant objected to a proposed transfer to Blackrock for commuting reasons and stated he had been promised a managerial position at the new plant. However, the witness reasoned that it was logical that the claimant move to Blackrock and that the manager there transfer to Blanchardstown. The claimant's proposed transfer to Blackrock was not a demotion.

The witness understood that the claimant had secured an alternative job by the summer of 2008. He told the claimant he could leave the respondent but "to see out" his tenure as plant manager there. The operations manager had a good working relationship with the claimant adding that he did a good job at the East Wall road depot. Other staff and sub-contractors started to comment on the claimant's situation at the plant and this led to the witness meeting the claimant in late June 2008. The witness said that this meeting was not confrontational and there was no pressure placed on the claimant as dates and departures had already been discussed between them. The claimant acceded to his request to fill out a termination form.

Determination

Having carefully considered the adduced evidence the Tribunal finds that a direct dismissal took place in this case. The respondent's action in calling a meeting at short notice and then seeking the claimant's signature on a termination form without proper consultation or representation amounted to a breach of fair procedures.

The claim under the Unfair Dismissals Acts succeeds and in the circumstances the Tribunal awards the claimant €5,200.00 as compensation.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)

