

## **EMPLOYMENT APPEALS TRIBUNAL**

CLAIM OF:  
Employee

CASE NO.  
UD64/2009

Against

Employer

under

### **UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms O. Brennan

Members: Mr. T. O'Sullivan  
Mr G. Lamon

heard this claim at Dublin on 20th July 2009

### **Representation:**

Claimant: Ms Susan Jones B L instructed by  
R. Bracken & Co, Solicitors, Main Street, Clane, Co. Kildare

Respondent : No representation listed

The determination of the Tribunal was as follows:

It came to the Tribunal's attention at the outset of this hearing that the claimant had received and accepted a statutory redundancy payment from the respondent at the termination of his employment. It was the claimant's contention that he was unfairly selected for that redundancy.

### **Respondent's Case**

Some of the direct evidence adduced by the financial controller was unusual in the sense that he read it from a prepared document. While no written contract or terms of employment was issued by the respondent to its staff certain customs and practices evolved in this working relationship. One such practice was the policy of first-in, last-out among employees of equal status when dealing with redundancy situations. Together with the logistics manger the witness informed the claimant on 18 November 2008 that his employment was to cease immediately on the grounds of redundancy.

In July 2007 this company employed nineteen staff including three warehouse supervisors one of which was the claimant. Between the summer and autumn of 2008 the respondent's trading and financial position had deteriorated to the extent that their staff had been reduced by six. Warehouse operations had contracted as business declined. As a consequence the company reasoned it was no longer necessary or viable to maintain three supervisors for their warehousing activities. Since the

claimant's date of commencement was the latest of his two colleagues the company in acting out their redundancy policy made the claimant redundant. No alternative positions were either discussed or offered to the claimant.

References were made to another identified employee. Initially the witness was unable to state that employee's position within the company but said he had been working in the warehouse section. By 2008, however that employee held the position of sales executive.

The logistics manager elaborated on this identified employee. It was possible that this employee started with the respondent in 2004 in an administrative capacity. He then transferred to one of the company's warehouses as an operative and reached a position of supervisor or team leader there. In July 2008 that employee attained the position of a sales executive. That position had been internally advertised as this was the practice within the company. This witness commented that a fair and transparent procedure had been applied in the selection of the claimant for redundancy.

### **Claimant's Case**

The claimant felt that this identified employee should have been selected for redundancy instead of him. However, he accepted that this employee did not have a position of warehouse supervisor in November 2008. The witness who commenced employment with the respondent in November 2001 maintained there were always four warehouse supervisors with this company. That number had reduced by one prior to his cessation of employment. The claimant would have applied for a position of sales executive had the position been advertised. It was not.

The claimant was working overtime on 18 November 2008 when he was asked to go to a company office. When there he was informed of his imminent redundancy.

### **Determination**

All other factors being equal the respondent applied a common policy of first-in, last-out to employees in redundancy situations. Evidence was given and was accepted that of the three warehouse supervisors in November 2008 the claimant was the one with the least service. There was some confusion over the exact status and position of this identified employee but it is clear he was not a supervisor at the time of the claimant's redundancy. A redundancy occurs when the position as distinct from the person is no longer needed and the person holding that position is not replaced. The Tribunal finds in this case such a situation existed and therefore finds that this was a genuine redundancy.

Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

