

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

CASE NO.

UD948/2008

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. P. Clancy

Members: Mr. B. O'Carroll
Dr. A. Clune

heard this claim at Ennis on 22nd January 2009
and 31st March 2009

Representation:

Claimant: Mr. Michael Kiely, SIPTU, Limerick No. 2 Branch, 4 Church
Street, St. John's Square, Limerick

Respondent: Mr. Kevin Langford, Arthur Cox, Solicitors, Earlsfort
Centre, Earlsfort Terrace, Dublin 2

The determination of the Tribunal was as follows:-

Opening Statements:

The respondent's representative explained that the respondent was a U.K. based company, which provided a security service to a number of car parks around Ireland. The claimant had been employed as a patrol officer at a shopping centre car park located in Co. Clare and had been in the respondent's employment since November 2004. A site manager and three other patrol officers had also been employed at the Co. Clare car park site.

In December 2007, the respondent was requested to cut labour costs at the car park but that same should not be implemented before Christmas. The staff were informed about the redundancy of one of the positions. The claimant's union representative was also informed. The respondent conducted a selection process for redundancy based on different criteria and the policy of "last in, first out" was not part of this criteria. All four patrol officers had an input into the selection process. The claimant was selected and his redundancy took effect in April 2008.

The basis of the claimant's case for unfair dismissal is that the policy of "last in, first out" should have been used in the selection process and that his union should have been consulted about the process. The respondent's case was that there was no obligation on them to use the process of "last in, first out" but that they could use any process which was fair and also the claimant's union representative had been informed about the process that was being used. The claimant received and accepted his redundancy payment.

Respondent's case:

In sworn evidence, the respondent's CEO explained that he had been with the respondent since May 1999. The respondent operated car parks under a management agreement and they have been at the Co. Clare car park site since 2002. The claimant commenced employment with the respondent in 2004 as a patrol officer.

When the respondent commenced working on the Co. Clare car park site, parking charges had been in place. Over time, these charges had to be reduced which in turn caused a reduction in the income that was generated. Up to 2007, a site manager and five patrol officers had been employed at the Co. Clare car park. When one of the patrol officers left employment, he was not replaced. Because of the reduced income, by letter dated 14 December 2007, the car parks management company informed the CEO of the necessity to reduce costs. One of the proposed cost cutting measures in this letter was the reduction in staff numbers. Redundancies had never been implemented in the Irish operation prior to this time so the H.R. department in the U.K. was consulted. It was the H.R. department who introduced the Irish operation to the redundancy matrix.

In early/mid January 2008, the staff were informed about the redundancy situation by the operations manager and a week later, same was confirmed to them in writing. While at a meeting in relation to another matter in a local hotel on 20 January, the CEO informed the claimant's union representative about the redundancy situation. The union representative made no reply to this information.

On 11 March 2008, the respondent wrote to all the patrol officers of the Co. Clare car park site - including the claimant - explaining that staffing levels had to be reduced by one patrol officer and a voluntary redundancy package was offered therein. The respondent had been hopeful that one of the patrol officers would avail of the voluntary redundancy package. The redundancy criteria that had been received from the U.K.'s H.R. department were also enclosed with this letter.

On 21 March, the operations manager and site manager interviewed the four patrol officers. Each patrol officer was scored against the first two elements of the redundancy criteria and the claimant received the lowest score. The first two elements of the redundancy criteria, and their weightings were...

- standard of performance in the job (30%)
- skills/knowledge/flexibility (30%)

The CEO completed the last two elements of the redundancy matrix in conjunction with the operations manager. These last two elements of the redundancy criteria, and their weightings were...

- attendance/time keeping record (25%)
- conduct record, including disciplinary record (15%)

The claimant received the lowest score from the process. The operations manager advised him accordingly by letter dated 27 March 2008, that he was being given two weeks notice and his

redundancy would take effect from 10 April 2008. The information on the claimant's RP50 form reflected this and same was signed by him on 10 April 2008. The claimant received his statutory redundancy at the same time as signing the RP50 form.

The CEO confirmed that the respondent had no obligation or agreement with the union to use the procedure of "last in, first out" when selecting someone for redundancy. As the respondent never had redundancies prior to this, they had consulted the H.R. department in the U.K. who had advised on the redundancy matrix. This process had been considered the most equitable. Subsequently, the site manager had been relocated and the number of patrol officers had been reduced to two due to further downturns.

At the commencement of his cross-examination, the claimant's representative stated that he had never had a conversation with the CEO at the meeting on 20 January in relation to redundancies.

In cross-examination, the claimant's representative put it to the CEO that the voluntary redundancy package which had been offered had been in excess of statutory redundancy but the claimant had only received statutory redundancy, that no opportunity to appeal against being made redundant had been offered to the claimant and the claimant had only been given one day's notice that the interview would be conducted on 21 March at 11.00am. The CEO explained that he did not know how much notice of the interview the claimant had received, as he had not been present.

The claimant's representative also highlighted that as 20 March and 21 March 2008 were Holy Thursday and Good Friday respectively, he, as a union representative would not have been available to attend such a meeting but that the operations manager had told the claimant that the interviews would continue with or without him. The CEO accepted that the union acts as a representative for the respondent's employees.

The CEO confirmed that the length of an employee's service with the respondent did not form part of the redundancy matrix. The redundancy matrix was used to highlight the best performer. The CEO was unsure if the claimant had been given the score from his redundancy matrix interview.

It was denied that the claimant had been given notice of the meeting of 21 March at 3.00pm on the previous day but had received one week's notice of the meeting. The CEO disputed that when the claimant had informed the respondent about the unavailability of his representative for the meeting, he was told that the meeting was going to proceed nonetheless. The CEO explained that notice of the meeting had been sent to the claimant and to his representative by letter dated 11 March. Despite being Good Friday, Friday 21 March was nonetheless a working day for the respondent and the CEO would have been happy for the claimant's representative to attend the meeting.

The claimant's representative highlighted to the Tribunal that he had not received the letter of 11 March and the onus had been on the respondent to ensure that the claimant was represented. He also highlighted that he had been on holiday leave from 16 March and had subsequently been on sick leave and did not return to work until mid April. However, the CEO said that there had been no deliberate attempt to exclude the claimant's representative from the meeting. The claimant had been asked if he had wanted the meeting to proceed, had been given an opportunity to think about it and had returned in the afternoon to allow the meeting proceed.

Replying to the Tribunal, the CEO explained that the respondent had been guided by their legal representative in relation to the right of appeal against selection for redundancy. The CEO was unsure if the claimant had been offered the right of appeal. He believed that all of the patrol

officers were asked the same questions at the redundancy matrix interview.

The operations manager had sent the letter of 11 March to the claimant and the CEO had sent a copy of it to the claimant's representative. The CEO had sent the letter to the representative himself because the operations manager did not know the claimant's representative. The CEO maintained that he had made every attempt to include the claimant's representative in the process. However, the claimant's representative maintained that the CEO had known his mobile telephone number and therefore could have contacted him if he had really wanted him included in the process.

The CEO maintained that the onus was on the claimant to have his representative present for the meeting. He accepted that it was not stated in the letter of 11 March that the claimant could have a representative present at the meeting.

In sworn evidence, the site manager explained that she had been employed at the Co. Clare car park site but had since been re-located to a site in Limerick city.

The site manager conducted the meeting with the four patrol officers on 21 March, which was a Good Friday. The Good Friday had been a bank holiday but was a normal working day at the car park. It had been decided to conduct the meeting on either the Thursday or Friday because all staff had been rostered to work on those days. All staff got notice of the meeting by letter dated 11 March.

The site manager did not believe that she had met the claimant on 20 March. All of the staff had known about the redundancy situation and had been discussing it. They had been informed about the voluntary redundancy package and if they were interested in same, they should discuss it with the CEO. She believed that it had been the week before 21 March when she and the operations manager had met all of the staff individually. She and the operations manager had wanted to ensure that all of the staff had received the letter of 11 March, that they were aware that the voluntary redundancy package was greater than statutory redundancy and that if they were interested in accepting same, they should contact the CEO directly.

On 21 March, the claimant had appeared at the meeting and explained that he had not been able to contact his union representative. He went out to attempt to make telephone contact with his representative and then returned to report to the site manager that his representative would not be available until the following week. The claimant was then brought to the operations manager so as to repeat this. The CEO was telephoned for advice and he in turn telephoned the respondent's legal representatives. The CEO then telephoned back and advised that the other meetings that had been scheduled could proceed. The claimant left to consider the position. Subsequently, he returned and advised that he had still been unable to make contact with his union representative but had decided to proceed with the meeting. By this stage, the meeting with the first two patrol officers had concluded. The claimant indicated that he would be interviewed after the third patrol officer and this interview was conducted in the afternoon.

In cross-examination, it was highlighted that the respondent's letter on 11 March to the claimant had referred to an interview within the next fortnight to conduct the redundancy process but no date for same had been specified. The site manager said the date for the interviews had been specified when the letter had been given to the claimant. She denied that the claimant had been told of the date of the interview at 3.30pm on the 20 March - the day before the interview was conducted. The interviews were conducted on the Good Friday because that was a working day for the respondent.

The site manager was aware that the claimant was a member of the union and always sought union representation. However, on 21 March when at the meeting, he had said that he had the letter for a week but had not contacted his union representative about it. The interview of the third patrol officer was due to commence when the claimant had said that he would proceed with the process. The CEO had been contacted for advice, and following contact with the respondent's legal representative, he had advised that the interviews could proceed. The claimant was therefore advised that his interview could proceed but he was not forced to proceed with it. He was advised that the other interviews were proceeding and he decided to have his interview proceed also.

Replying to the Tribunal, the site manager confirmed that she and the operations manager did the first two parts of the redundancy matrix. In conducting the interview, the patrol officers were given scenarios in relation to customer service and asked for feedback. A decision in relation to results was not made on the day and the overall result was posted to all concerned with the process.

The claimant had not asked to have his interview postponed but had said that he had been unable to contact his union representative. The interviews had not been postponed because the other staff were present and all were anxious that the matter be concluded.

Claimant's case:

Following receipt of the letter of 11th of March the claimant did not receive any further official correspondence from the respondent. That letter offered voluntary redundancy stating that selection interviews would not take place if one person chose voluntary redundancy. The claimant did not discuss the situation with his colleagues as he felt it was a personal decision whether to except voluntary redundancy. The respondent was aware that there was conflict between the claimant and the other three members of staff and they had not spoken for 2 months.

The claimant was informed on Thursday morning that the selection interviews would take place on Friday at 11am. The claimant tried to contact his union representative but failed as it was Good Friday and consequently raised objections regarding insufficient notice of the meeting and as a result his failure to contact his representative. The claimant was informed that the respondent had contacted his representative on his behalf. An hour and a half later the respondent informed the claimant that it had been confirmed through the union's Dublin office that his representative was aware that the meeting was taking place and that it should proceed as planned. The claimant felt that he would be at a disadvantage if he didn't proceed with the meeting. The claimant was informed that he scored the lowest mark but was not given a copy of the redundancy matrix results. The claimant was not given an opportunity to improve his performance and all redundancy paper work was completed and signed.

Three years previous to the claimants redundancy a member of staff was made redundant using the 'last in first out' policy, of the 4 possible patrol officers to be made redundant the claimant was the first to be employed with the respondent and thought length of service should have been included in the redundancy selection matrix. On the 4th of January the respondent completed a salary certificate stating that the claimants job was permanent but proceeded to make the union aware of the redundancies on the 22nd of January.

Determination:

Having carefully considered the evidence adduced by both parties the Tribunal accepts that a genuine redundancy situation existed. However the Tribunal is not satisfied that the selection process was entirely fair and awards the claimant €2,000.00 compensation under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)