

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee

MN1436/2008

against

UD1482/2008

Employer

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath B.L.

Members: Mr F. Moloney
Ms. E. Brezina

heard this claim at Dublin on 1st May 2009

Representation:

Claimant:

Dominic Dowling, Solicitors, 37 Castle Street, Dalkey,
Co. Dublin

Respondent:

Mr Joe Bolger, Esa Consultants, The Novum Building,
Clonshaugh Industrial Estate, Dublin 17

The determination of the Tribunal was as follows: -

Respondent's case:

The Tribunal heard evidence from the operations director who is responsible for the marketing, service, maintenance and repair and purchase of new vehicles. He had twenty-three staff reporting to him including the claimant. The claimant was the re-marketing compound manager and was responsible for the day-to-day management of the compound. The respondent is a fleet management company and had trade and retail buyers. They purchase and lease the vehicles and manage for the client. Witness and the claimant got on very well and there was never a complaint

about his work. This was the first time that redundancies had to be made and there were three at this time. It was a very difficult decision however they were responsible to their shareholders and had to reduce costs and become more efficient. They introduced a new web based car re-marketing

system as opposed to the manual system. The vehicles can now be viewed on line and bidding can also take place on line. This is of particular benefit to customers outside of Dublin. A number of traders still come to the compound. Previously all the bids had to be gone through by either witness or another employee however this is no longer required as it is done automatically. The payment process has also been changed and is now paid directly into the bank account.

Their business is technology driven. Twelve months prior to the claimant being made redundant witness suggested an ECDL course to up-skill as a good starting point. This was not received very well by the claimant and he suggested the he would need an assistant. It was discussed periodically that this new system was being put in place. Two others were made redundant also as the respondent found improvements in technology. It was impossible to know when was the best time to break the news of redundancy to the claimant. The claimant was called to a meeting on the day he returned from holidays i.e. 29th September 2008 and the situation was outlined to him in relation to the redundancy. He was told there would be a consultation period of two weeks and four weeks notice would be given after that. The purpose of the consultation was to help him with his C.V. if it needed to be up-dated. The claimant's wife also works with the respondent. The claimant was very shocked with the news of his redundancy. It was a bombshell to him because of the timing of the announcement.

In line with standard company procedure the claimant's swipe card was disabled which would deny him access to his computer however his card was subsequently re-instated. The claimant left on the Monday and witness assumed it was because of the shock however he returned on the Wednesday. It was never said to the claimant that he had to leave immediately. Where the respondent was open three days, they are now open two days. Where they used to have the yard open all the time for viewing, it is now open only two days. They are also open on Saturday for retail customers. The claimant returned his car and it was agreed that he could retain his mobile phone.

In cross-examination witness agreed that the day-to-day functions of the yard now exist on a restricted basis. Witness was unaware of claimant being told that the computer course he applied for was not taking place. He could not remember specifically saying to the claimant that the excel spreadsheet was a problem. In answer to questions from Tribunal members witness stated that the claimant returned the redundancy cheque. There was no alternative role available for the claimant.

Claimant's case:

The claimant commenced his employment in January 2003 and his job at that time was to collect the cars. After two months he was asked by the manager to take on other tasks and in August 2003 he signed a contract of employment. At the end of May 2008 all the staff including the claimant were asked to sign new contracts. He started work at 8.30am initially working at a premises in Stillorgan and then moved to Leopardstown. As part of his job he brought home all the car keys and would have them in place each morning. Customers could come in to view the cars at any time and some travelled from the country. The claimant had to appraise each car and have the service history card for each one. A sale was held every alternate Wednesday. Part of his job was to do a spreadsheet where he inputted the information at the end of each month to attach charges to the cars. When the tax books were received he had to look after the change of ownership for the vehicles. Management then decided that another employee would do this part of the job. His working day finished at 5pm and he worked five days a week in addition to Saturdays in recent times. In the early days only two individuals in the company saw the bids. He could also sell vehicles privately to individuals.

Staff were hearing of a new system being put in place. The claimant was told that nothing would change other than that he would now report to a different person, Mr M. Staff were told that there would be less paperwork with the new system. The claimant was not told that he required a new skill set. In June 2006 an email was sent to staff in relation to an ECDL course, beginners and intermediate. The claimant chose the beginners but he never got to do this course. He did not say to the respondent that he needed an assistant.

On the morning of Monday 29th September 2008 at 7.53am he received a text message asking him to come to the boardroom at 8.30am. The operations director and a representative of the company were there to meet him. When he was told he was being made redundant it was the biggest shock of his career to date. He was told the reason for the redundancy was because of the financial downturn and they had to make cutbacks. He had been very busy in his work even though prices had changed. His private sales had gone up and his commission was increasing annually. In January/February the operations director came to the yard and said everything great and to keep going. He had never been asked to re-skill. After being told the news of his redundancy it was suggested that he would go for a coffee with his wife, who also works for the respondent three days per week. He was told that he had two weeks to think of what to do. His notice was backdated to the previous Friday. He was not permitted to remove his diary from his desk as the operations director had given instructions that the claimant could not remove any papers. He felt that it was something personal that went on against him and this was the reason for his redundancy.

The yard has since been up-graded and dealers rang the claimant wanting to boycott the respondent. He met Mr G who is new in the yard and works there most days of the week. Mr G is now doing his job. The claimant secured alternative work eight weeks after his date of redundancy at a lower rate of pay. He returned to the respondent the cheque, which he received for the six-week period.

In cross-examination witness stated that on the day of his redundancy he left and came back to the yard. A customer came in to collect a car and the claimant could not get in to his computer. He went back in to the office and he was denied access to the computer. He made an application to do an Excel course and he received no response from the respondent. The bidding is now different but this was not part of the claimant's job. He did a very good job and others with less service are now doing his job.

Determination:

The Tribunal has carefully considered the evidence heard in the course of this hearing. The employee states that he was unfairly selected for redundancy when he was made redundant by the employer on the 29th September 2008. The evidence demonstrates that the employee had no inkling that his job was in jeopardy and that for him the meeting on the 29th September 2008 was a bolt from the blue.

The onus is on the employer to demonstrate that any reasonable examination of the facts would show that a genuine redundancy situation existed and that the role therefore being carried out by the employee had become obsolete. The employer's contention was that the employee's role was redundant by reason of the fact that new I.T./computerised systems were being put in place, which would effectively replace the employee.

In reality the multiplicity of tasks and functions being carried out by the employee were not taken over by the upgraded computer system. The yard continues to be in operation. It continues to be

opened and closed and continues to have transporters coming in and going out, it also has cleaning services, opening hours for potential customers and other maintenance service facilities. The operation may not be on the same scale as heretofore but each and every task performed by the employee continues to be carried out.

The employer seemed to be relying on the inability of the employee to collect bids plus process data for the re-sale of used cars. However, the evidence adduced by both sides recognised that this was never really the employees' function. Mr K and Mr M were largely responsible for carrying out this process both under the old system of faxing in bids and the new system of receiving bids on line.

The employer sought to rely on the employee's inability if not outright refusal to up-skill himself in I.T. The underlying suggestion being that if the employee had armed himself with a better understanding of computers, spreadsheets and the methodology for inputting information he would have continued in his employment.

The Tribunal does not accept that the employee was made acutely aware of the risk to his job if he was not prepared to up-skill. In the course of his employment the employee has clearly demonstrated a willingness to learn, up-skill and adapt as and when the circumstances required. This included a generalised ability to work the computers in the office. The employer accepted that the annual review went well, with no hint that the employee was deficient in any area.

The Tribunal believes it to be unfair to have selected this man for redundancy in circumstances where the purported reasons for selection do not stand up to scrutiny by the Tribunal. The employee was simply never given the opportunity to upgrade his skills in tandem with the workplace proposal to upgrade its system. The employer has failed to discharge the onus on it to demonstrate it acted fairly and reasonably in all the circumstances.

The Tribunal finds the employee was unfairly dismissed and awards him the sum of €19,708.00 under the Unfair Dismissals Acts, 1977 to 2007 and €3,800.00 under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)