

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

Employee

- claimant

CASE NO.

UD1158/2007

against

Employer

- respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. Gilvarry
Members: Mr. D. Morrison
Mr M. McGarry

heard this claim at Castlebar on 13th January 2009
and 24th March 2009

Representation:

Claimant: Mr Brian Gill, Solicitor Damien Tansey & Associates, Solicitors, Law Chambers, 3 Wine Street, Sligo

Respondent: John Jordan BL instructed by Mary Mc Gregor Douglas Kelly & Son, Solicitors, Swinford, Co. Mayo

Respondent's case:

The financial controller of the company since 1994 gave evidence on behalf of the respondent. The claimant commenced employment as the HR Manager on the 4th September 2006. Previously to this the company had no HR manager, for about a year and a half this witness held responsibility for HR within the company and was aided by an employee with in the accounts section. Before this they had previously employed a part time HR officer. He has now resumed responsibility for this role, and another employee looks after payroll and assists with any recruitment needed.

He explained that the company had enjoyed great success during the boom in the construction industry, as a result of this their turnover grew rapidly and middle management roles had to be brought in. They had plans to grow further and as a result of this it was decided to recruit the claimant as HR manager. From August 2006 the turnover of the respondent started to decline each month in comparison to the previous years. Throughout this period staff numbers remained the same. The trend of decreasing turnover continued and as an example he referred to the accounts of 2008 which he describes profit and turnover as being drastically reduced.

The claimant was well liked within the company. He had no warnings on his file and was given a

good reference when he left.

It was clear from early 2007 that things within the company would have to change to bring their costs down. This witness did an analysis of payroll versus gross production sales value in February 2007. In March he did an analysis of employee head count by department for a eight week period a memo in relation to this was introduced in to evidence. In this memo he recommends a staff overview of employee requirements and proposes a reduction in staff levels to that of 2006.

A memo dated 17th July 2007 was introduced in which a director of the company had noted to this witness that he should examine the payroll for the last six months to identify potential cost savings, a series of meetings took place. It was made known to the claimant that staff had to be reduced and he consulted with managers. All departments were looked at, at the time they had just invested in a new IT package this was due to go live in January 2008 and as result of this no employees within the Accounts or IT department could be cut. This witness looked at the HR department, there was the claimant. He thought that they should revert back to their previous arrangement within HR. The operations manager could not be let go as he was effectively running the day to day operations of the company. Though his contract was changed to a week to week basis and he has since left. it was explained to him that his role would be reduced so hence his salary would be, he eventually gave the company one months notice in March 2008. An employee recruited in September 2007 to head up the change in relation to the new IT system was let go in March 2008.

At the time of the claimant's dismissal the company were using a jobs website to advertise for vacancies, they were committed to this through a twelve month contract. The lady helping him with the HR held the password to this. This witness never entered vacancies on this site. There were jobs advertised on this site, but the company were not recruiting at this time. From October 2007 to December 2007, sixteen employees handed their notice in, one was made redundant and 22 contracts were terminated for employees with short service. Six people were taken on before the claimant was let go. In 2007 124 people left the company while 85 were recruited. At the time of the claimant's dismissal the respondent had 299 employees, they currently have 221.

Following on from a meeting with this witness and two directors on the 12th October 2007 it was decided to revert back to the previous arrangements for HR within the company and that the HR manager would be let go.

On the 26th October the claimant along with the relevant manager spoke to employees whose contracts were going to be terminated. The claimant had advised the company as to how to handle the situation and what to say. A meeting of all staff was then held and it was explained to them that they were looking after the long-term interest of the company. At this stage the claimant was not aware that he was being made redundant. The claimant was asked to come to the office where he was told that the HR manager position was no longer needed in the company. The claimant was given one week plus three weeks extra, but he declined. They informed him that they had a sales representative position in Northern Ireland and asked him would he consider taking this position and to comeback to them with his decision the following week. He refused the cheque that day and they wrote to him the following week informing him that they would be paying him by pay path. If there had been no slump within their trade the claimant would still be employed.

Claimant's case:

The Tribunal heard evidence from the claimant who explained his work history to the Tribunal. He had been the HR manager in the respondent company. Some of his tasks included examining training and performance management tools, examining the HR handbooks, managing the time and attendance systems and was custodian of records. He also liaised with employees who were on long-term sick leave. He also understood that when he took up employment in the respondent that the HR manager had left some months prior to his arrival and that the HR manager, with a training role, was to be filled.

He was not told by the financial manager that the company was experiencing financial difficulties, in fact the respondent were employing staff on an ongoing basis. He was told to recruit sales people, therefore the company was in an expansive mode rather than a sliding one. The company's weekly turnover was approximately €600,000. In the weeks leading to his dismissal the turnover was €500,000 and €700,000. The company was easily meeting its targets. There were management discussions about increasing their salaries in April of that year.

There was a meeting on 12th October, which the claimant and the owners/directors attended. The meeting was in relation to expanding business and sales representatives. There was a fleeting reference that the employee numbers did not tally but there was no mention of who would be let-go. There was no discussion as to the claimant's position. The meeting was upbeat and he did not think his job was under threat.

The claimant got a phone call from the operations manager on Friday 19th October. The operations manager told him that they would have to meet on Monday 22nd to identify which production staff positions to make redundant.

They did meet. The claimant wanted to wait until he got advice from IBEC and to speak to the Union. The advice he received was to use the last-in, first-out basis for selecting redundancy. He found it a stressful time, as he had not let twenty people go in such a short space of time; also it was he who had recruited some of the employees. They met the employees on Friday 26th and told the employees the news.

The claimant then got a phone call from one of the directors/owners. He was asked to go to the office. He met the owner/director and the financial controller. There was a statement on the table also a p45 and a cheque. He was told that they had to take a difficult decision to let him go. The claimant was shocked. He told them that he would have to take advice on the matter. The owner/director told him that it would be best to settle the matter at the time. He was told that there might be a sales position vacant. This was on 26th October and up until this time there had not been a dilution of his role to other areas or departments in the respondent. Some eight to ten days later he got a letter from the respondent and his p45.

Cross-examination: the claimant did not know that the previous HR manager had worked part time or three days per week. He did not agree with the financial manager's evidence.

Determination:

Dismissal was not in dispute in this matter, and the respondent raised the defence that the dismissal was by way of redundancy. The Tribunal is satisfied that there were severe financial difficulties in the respondent's business, and notes that the claimant himself had assisted in letting go a

arge number of his fellow employees just prior to his own dismissal. The Tribunal accepts that the respondent's financial losses warranted the company seeking redundancies. It also accepts the respondent's evidence that the claimant's functions could be carried out by the financial manager assisted by the lady in accounts, as had been the case in the past. Finally the Tribunal notes that while there was no advance consultation or discussion, it was common case that an alternative position in sales was discussed at the meeting on the 26th of October, though the claimant stated that it was only after he protested strongly the decision to make him redundant.

The claimant made the case that there was an unfair selection for redundancy, and that further or in the alternative the failure of the respondent to consult with him in advance and to discuss options and allow him to advance alternatives, rendered the entire process unfair. The Tribunal, while noting that the respondent in failing to consult in advance did not follow best practise, was satisfied that the selection for redundancy was objective and fair. Accordingly, the decision to declare the claimant's position redundant was reasonable.

The Tribunal unanimously determine that the dismissal was not unfair as it was a dismissal arising wholly from redundancy. The claim under the Unfair Dismissals Acts, 1977 to 2007, therefore fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)