

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE *-claimant*

CASE NO.
UD246/2009

Against

EMPLOYER *-respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

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 10th September 2009
and 23rd October 2009

Representation:

Claimant: Ms. Deirdre Browne B.L. instructed by Kennedy Fitzgerald, Solicitors, The Waterfront, Bridge Street, Galway.

Respondent: Evan O'Dwyer Solicitor of Crean O'Cleirigh & O'Dwyer, Solicitors, Ballyhaunis, Co. Mayo.

The determination of the Tribunal was as follows: -

Respondents Case

The Managing Director (PC) of the respondent outlined the products the engineering company make designed for use in the construction industry. The business had expanded in its height to employ 47 full-time staff but due to the dramatic downturn in the construction industry it has downsized to employ 24 full-time staff. The respondent has seen a 50% decrease in income this year compared to last year, the market for the respondent's product has collapsed and the respondent is now in a considerable amount of debt with an uncertain future.

In October 2007 seven staff had left from various areas of the company - cutting, welding and finishing/painting. The respondent had to review staffing levels as the income from production had so significantly decreased. The respondent had already sold a truck and any other plant machinery they could. At this point four positions were identified to be made redundant, two sales positions one logistics position and one maintenance position which was the claimant. A further nine people

have been made redundant since the claimant.

There was only one maintenance position, which involved greasing the machines, checking the machines and ascertaining the degree of any faults with the machines. The supervisors in the respective areas of the factory are now completing the claimant's duties.

The claimant was employed initially on the robotic welder, which the claimant operated and programmed – this machine is now being sold. The claimant was given further training when the robotic welder ceased operation. The claimant had a variety of skills but there was no other option but to make his position redundant.

The selection process was fair, the Managing Director looked at the positions to be made redundant not the staff personally; he had to make his sister, who ran the canteen redundant. The claimant was the only person employed in maintenance consequently selection criteria did not apply in his area of work.

The Managing Director informed the claimant of the difficulty the company was in; he showed him the figures and explained the situation. The first time the claimant was given notice of the Redundancy PC knew the claimant would be shocked so they had a few further discussions after that. The first meeting lasted 15 minutes. The claimant prompted the second meeting where they discussed the situation again, it lasted about 2 hours. During the second meeting the claimant said that there were people working with the respondent less time than the claimant to which PC responded that they could not get rid of another job for him. The claimant was due to finish work on Tuesday but PC was going to be at a meeting so he suggested the claimant finish on Friday instead. The claimant insisted he complete his notice by working the Monday and Tuesday. PC gave the claimant the RP50 form to sign but the claimant refused to sign it, PC informed the claimant the form would be here if he changed his mind. The claimant shook PC's hand and said *"don't take this personally but I feel like I've been hard done by, you'll be hearing from my solicitor."* The respondent sent a letter to the claimant a week later reminding him that the RP50 form was in the office if he wanted to sign it.

The Managing Director and the claimant have known each other since school. PC disputes that it was interpersonal difficulties that led to the claimant's redundancy. PC does not believe that any interpersonal difficulties existed, there were no arguments within the company and the claimant never informed PC that he had any difficulty with him in the work place.

The Managing Director had allowed a phone company to seek planning permission to erect a mast on his land, which was refused nine years ago. The claimant had been part of a group objecting to the erection of the mast. The phone company re-applied for planning permission a mile and a half away from the original site on land that was owned by the local group water scheme. The application was successful and all members of the group water scheme benefit from the rent paid by the phone company. There were no objections lodged against the second planning application.

Cross Examination

The Respondent has a sister company with two members of staff which is only involved in sales and rentals, the claimant was not employed by this company. The claimant's job had evolved over time due to the change in technology. When the robotic welder he operated became redundant the claimant's job was solely maintenance, which had always been part of his job description. Due to the claimant's maintenance function he was familiar with all the machines in the factory, but would not have the skills to work in the assembly area or operate the Laser machine without training.

The respondent held a production meeting on a weekly basis where the ongoing redundancy situation in the company was discussed, a representative from each area of the factory was present at these meetings.

A meeting was held in late June where the financial advisors informed the respondent that there would have to be redundancies if the company was to continue trading. A meeting was held with all the supervisors informing them that there was going to be redundancies. Voluntary Redundancy was not an option as the respondent was only looking at actual positions that were redundant. The factory is now on a three-day week and 60% of the machines have been decommissioned so the area supervisors do the little maintenance that is required.

The difference of opinion concerning the erection of the phone mast was not an issue for PC he respected the claimants opinion. PC is also chairman of the local group water scheme; the claimant had an issue with the group water scheme regarding a water pipe on his land. PC does not accept that a 'row' happened regarding the issues with the group water scheme. Another employee that had objected to the mast left the employment of the respondent due to ongoing medical problems.

A last in first out policy was applied by the respondent in the production area of the factory but the claimant was not in a production role or associated with that area. The Managing Director advised the claimant that in twelve months if things improved in the company he would be in contact.

Claimant's Case

The claimant started work for the respondent in 1998 as an operator for the robotic welder with maintenance duties in all areas of the factory. The robotic welding machine went out of commission in 2007 so the claimant's role became solely maintenance. If the claimant could not fix a machine he called the engineers to fix it. The claimant agrees that the company is in difficulty but the maintenance work still has to be done.

The claimant was not aware that there was a possibility of redundancy within the respondent. On the 15th of July the claimant was called to the PC's office. PC spoke about the difficulty the company was in but the claimant was so shocked he did not absorb any of the information. The claimant was given 4 weeks notice, consisting of two weeks of work and two weeks holidays.

The claimant was employed by the respondent for a lot longer than a lot of the other staff in the production area. The claimant could have worked in the cutting, assembly, painting areas and on the Laser machine with training. The claimant would have a major input in the R&D area and would have worked a three-day week.

The claimant was called to PC's office again to inform him his Minimum Notice had been miscalculated and he would have to return to work after his holidays to complete his notice period. During the claimant's holidays he consulted with his solicitor who advised him to send a letter outlining his views. The claimant did not take action as he still hoped the situation could be discussed further. The claimant requested a further meeting with PC as he was due to leave the following Tuesday. The claimant contacted his solicitor when the meeting broke up for lunch and sanctioned the solicitor's letter, which was faxed to the respondent. The claimant's solicitor's letter outlined that the claimant was being unfairly dismissed and not being made redundant, however he still wished to remain with the company. The letter requested that the respondent confirm by return that the redundancy was not proceeding. The claimant informed PC that he would not be signing any forms or accepting a cheque.

The claimant believes that the personal difficulties with PC arising from issues relating to the mast and the group water scheme led to his redundancy. Redundancy was the consequence for the letter of the 1st of April to PC regarding these difficulties.

Cross Examination

The claimant accepts that 23 jobs have gone from all areas of the respondent since 2007. The claimant does not believe the maintenance role was redundant, as it still needs to be completed.

Determination

The Tribunal carefully considered the evidence given and submissions on behalf of the parties. The Tribunal was impressed by the evidence given by the witnesses and in particular PC. The Tribunal recognised that the claimant genuinely felt aggrieved by the decision to make him redundant, and that PC was also upset by the decision he felt he had to make. It was clear that the respondent required to make staff redundant, and the question is whether that selection was fair. In this regard the Tribunal prefers the evidence of the respondent and is satisfied that the respondent was objectively fair in selecting the claimant for redundancy. The Tribunal is further satisfied that a genuine redundancy situation existed in the company at the time and that no alternative position was available for the claimant within the company therefore the claim under the Unfair Dismissals Acts, 1977 to 2007 must fail, and is hereby dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)