

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE - appellant

CASE NO.
UD70/2009

against the recommendation of the Rights Commissioner in the case of:
EMPLOYER - respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. A. Taaffe

Members: Mr. J. Goulding
Mr. F. Barry

heard this appeal in Dublin on 21 September 2009 and 6 November 2009

Representation:

Appellant(s) :

Mr. John Murphy, SIPTU,
Construction Branch,
Liberty Hall, Dublin 1

Respondent(s) :

Mr. Joseph Bolger, ESA Consultants,
The Novum Building, Clonshaugh Industrial Estate,
Dublin 17

The determination of the Tribunal was as follows:-

This case came to the Tribunal as an appeal against Rights Commissioner Recommendation r-057327-ud-07/DI.

Respondent's Case

A witness (JOG) gave evidence that she was employed by the respondent since 1992 and as human resources manager for seven years. In April 2006 she had met with a trade union official (BOB) who acted on behalf of the workforce to discuss a form of matrix to be used in redundancies. There

had been three or four redundancies and, at that stage, fifteen agreed redundancies took place.

The witness had met with the appellant (after he phoned her) with the contracts manager (TE) after the appellant was notified in August 2007 of a redundancy. KB (also of the trade union) had dealt with the appellant's appeal and the issues discussed at their meetings with the appellant included length of service, lower rate of pay and the loss of the appellant's van. He was offered several jobs. The appellant rang in mid-September 2007 and asked for his P45 and RP50.

Cross-examination by the appellant's Tribunal representative covered the appellant's service points on his matrix and the use of his company van and its impact on his matrix. In response to this cross-examination it was suggested by the respondent that since summer of 2006 there was no objection to the application of the matrix and that twenty-four people had been made redundant using it. On behalf of the appellant it was contended that he would lose one hundred euro per week and his van if he accepted another position.

Appellant's Case

BOB (an abovementioned trade union official) gave evidence in respect of his meetings with the respondent in connection with agreeing the matrix and some differences in respect of the method of awarding points. Following the final meeting with the respondent the union did not write to the respondent to record or communicate these differences.

At the resumed Tribunal hearing on 6 November 2009 the appellant gave evidence that he had worked with the respondent since April/May 2001. Transport was provided by them. In 2005 he was given a van but was never told that this would or could count against him in a redundancy situation. He was not told of the matrix in 2006 by either his union or the respondent. He had no problem with the matrix if the skills were equal. He felt that the length of service should prevail. He then gave evidence in respect of the alternative jobs that he had been offered and what he alleged were the lower rates of pay involved.

In cross-examination by the respondent's representative the appellant agreed that he knew about the redundancies prior to his but did not know of the matrix. He was a member of the abovementioned trade union. It was suggested to him that there were one hundred and seventeen redundancies after his. He agreed that he had asked for his P45 so that he could sign on as he had a bank loan.

Determination:

The Tribunal considered all of the evidence adduced. It is for the respondent to establish (a) that a redundancy situation arose and (b) that, in implementing this process, it acted fairly and reasonably towards the appellant. The human resources manager, whose function it was to implement this process on behalf of the respondent, had reasonable experience in her position and prior to the redundancy, had engaged significantly with the appellant's trade union over a period of time at a number of meetings. This engagement resulted in the respondent introducing and implementing a specified matrix in its redundancy process. This matrix was applied exclusively in a substantial number of redundancies implemented by the respondent with the knowledge of the appellant's trade union prior to the appellant's redundancy.

Section 6 (3) of the Unfair Dismissals Act, 1977, as amended by section 5 (b) of the Unfair

Dismissals (Amendment) Act, 1993, states that:

“In determining if a dismissal is an unfair dismissal regard may be had, if the Rights Commissioner, the Tribunal or the Circuit Court, as the case may be, considers it appropriate, to look to the reasonableness or otherwise of the conduct (whether by act or omission) of the employer in relation to the dismissal.”

The Tribunal finds (a) that a redundancy situation arose and (b) that, in all the circumstances, the respondent did not behave in an unfair or unreasonable manner towards the appellant in making him redundant and did not unfairly dismiss him. The Tribunal, therefore, upholding Rights Commissioner’s Recommendation r-057327-ud-07/DI, finds that the appeal under the Unfair Dismissals Acts, 1977 to 2007, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)