

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.
UD247/2009

EMPLOYEE –*Claimant*

against

EMPLOYER - *Respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mrs. M. Quinlan

Members: Mr. M. Flood
Ms. K. Garvey

heard this claim at Dublin on 23rd June 2009 and 14th October 2009

Representation:

Claimant: Mr. Brendan Ogle, Unite Trade Union,
55/56 Middle Abbey Street, Dublin 1

Respondent: Mr. John Quirke B.L. instructed by Mr. John Branigan, Branigan & Co, Solicitors,
No 3 The Bookend, Essex Quay, Dublin 8

The determination of the Tribunal was as follows:

It was the claimant's case that the respondent unfairly selected him for redundancy. The respondent provides archaeological services.

Respondent's Case:

The Chief Executive Officer (hereinafter CEO) gave evidence that he worked for the company for a period of time before taking up other work in 2004. In October 2007 he was invited to return to the company and take up the position of CEO. During his absence the company had grown extensively. The company required an organisational structure, as the employees at that time did not have clear goals and responsibilities. A copy of the structure as devised by the CEO was submitted to the Tribunal. The CEO met with each of the employees on an individual basis as part of the process. The claimant worked as a Senior Supervisor in the Environmental Impact Assessment (hereinafter EIA) department, which became clearly defined as a result of CEO's structuring and the claimant became head of the function. The claimant and a colleague had been performing EIA work prior to this but it had not been considered a separate department. EIA work is undertaken prior to any large-scale development in order to ascertain the overall environmental

impact. The assessment is carried out in relation to development works rather than peat land work. The claimant managed one staff member for the southern operation and one further member of staff carried out EIA work in the respondent's northern office. An Operations Manager assigned the claimant's work to him. Most of his work related to road development, ESB pylons, and pipelines etcetera. At that time road development in the south was very busy.

However, in 2008 the economic environment changed and there was little speculative work. In order to diversify the company examined other heritage projects and this brought some small number of heritage contracts to the claimant's department. However, work received from the national roads authority and other development work ceased. There was a decline in the company's level of business.

The company's financial year ran to the end of May 2008 and the company made a profit. However, when the CEO examined the figures for August 2008 during September 2008 he realised that the company's costs were significantly exceeding revenue. Between May 2008 to the end of August 2008 the company made an unsustainable loss of between €250,000 to €300,000. Rent was the second most expensive cost after salaries.

The CEO met with the directors on the 7th October 2008 and made a number of recommendations based on the small amount of new work the company was receiving. The majority of the work received was post-excavation work, which involved writing reports and interpreting archaeological information. It was clear that the company's future was peat lands and post-excavation work. To ensure the survival of the company it had to focus on these two areas of work. The CEO and the directors examined measures to reduce costs. As payroll was the largest cost they considered the resources needed to undertake the peat lands and post-excavation work. The CEO met with the Operations Managers on the 9th October 2008 and undertook the same exercise to identify the best way to resource the company's work into the future. One further meeting was held on the 14th October 2008 with the directors and the managers.

As a result of the meetings it became evident that there were employees surplus to requirements. It was necessary to inform the staff of the problems faced and the CEO sent an email to all staff on the 14th October 2008 informing them of a company meeting on the 16th October 2008. The meeting of the 16th October 2008 was conducted by conference call with the other offices. The purpose of the meeting was to explain the situation and outline to staff the requirement to adapt to ensure the survival of the company. A copy of the minutes from the meeting was opened to the Tribunal.

There were a number of options considered to try and avoid redundancies such as terminating the lease on one of the offices but this was not possible. The CEO was reluctant to implement wage cuts as in his experience they did not work. He offered to tender his resignation but the Board did not accept this at that time. He was later made redundant in April 2009. The CEO was available to speak with staff and he met the claimant on the 17th October 2008. Human resources was not present at the meeting as its purpose was to discuss matters in a two-way dialogue. No decisions had been taken at that time. The claimant suggested ways to help the company and he also recognised the direction the company was taking with post-excavation work. The problems faced by the EIA department should have been obvious to the claimant at that time.

One new employee was interviewed and recruited during August/September 2008. Ms. C had previously worked for the respondent for five years, had peat lands expertise, a research background and she had also worked with the national roads authority. The company retained Ms.

C as she was not employed for EIA work and she possessed other necessary skills, which would enable her to undertake more roles within the company.

A final decision was made in consultation with the directors and management. There were nine redundancies ultimately decided by the company and the redundancies were selected from many departments. In the claimant's department (EIA) there was insignificant amounts of new EIA work and it was clear that there was virtually zero speculative development projects going to take place and there were no further heritage projects. The EIA department was no longer required as there was such a small number of new projects it was felt that the directors and Ms. C could undertake the work with the assistance of the northern EIA office. A decision was taken to close the southern EIA office and as a result the claimant was informed on the 22nd October 2008 that his position was redundant. Since the time of October 2008 there have been further redundancies in the company.

During cross-examination the CEO accepted that a number of staff, including the claimant, suggested pay cuts. Four members of staff were asked to accept a pay cut. Pay cuts were not across the board as in CEO's experience pay cuts demoralise staff and can be counter-productive as well as hampering survival.

It was put to CEO that the claimant sent a letter in November 2008 requesting the reasons why he was selected for redundancy but had not received a reply. CEO stated that he had not received this letter.

A Director gave evidence. She corroborated the evidence given by the CEO. She had not attended the meeting of October 16th 2008 but was aware what it concerned. She stated the respondent tried to keep the claimant on.

On cross-examination she stated that the claimant was an archaeologist, was experienced in fieldwork but had requested to be office based. When asked by the Tribunal, she explained the company was mainly hired by the construction industry.

A former employee who worked in Human Resources gave evidence. In September 2008 he heard the company would be restructured. The CEO informed him the company was in dire straits when they met in September / October to discuss the matter. All staff were advised of the situation at the meeting of October 16th 2008 of which he took the minutes. All staff were present for the conference call, a role call was even taken. He was not present at the 1 to 1 meetings. On October 22nd 2008 he was informed who would be left go.

On cross-examination he explained he had a B.A in Human Resource Management and Industrial Relations. He had considered the redundancy legislation and it was decided it was not a collective redundancy and therefore staff were not required to be given 30 days notice. The claimant did attend monthly meetings. When asked, he explained 1 person had taken voluntary redundancy from the northern office.

Claimant's Case:

The claimant gave evidence. He was employed as a Senior EIA Archaeologist Manager for 6 years with experience in EIA archaeology, desktop reports, archaeology assessment reports and when the need arose fieldwork. He also was a photographer and had an I.T. qualification. In June 2008 he was made Senior EIA Archaeologist Manager. In August 2008 Ms. C was recruited. He was told it

was to assist him. He had attended monthly meetings as head of the section but was not made aware of the respondent's financial difficulties.

On October 16th 2008 they met in the office and were informed by the CEO by conference call of the financial difficulties and that there would be redundancies. All sections would be affected. He was available the following day for 1 to 1 meetings. At the meeting he asked if staff could work shorter hours or take a pay cut. The CEO said it would not work and would not consider the matter. When put to him, he said that he had not had sight of the minutes of the meeting until the first day of the EAT hearing.

He met the CEO the following day. The CEO told him he would not be taking any notes and would listen. He outlined his skills set, the work he had completed and the fact that he had been recently promoted. He asked if the EIA work would continue and was told yes but on a smaller level. He was told he, a colleague (S) and Ms. C would be considered for redundancy. He assumed Ms. C would be let go as she had only been recruited recently. There was no mention of the redundancy selection criteria.

On October 22nd the redundancies were announced. A list of staff was posted on the notice board. His name was in the middle of the list. He again met with the CEO and was told he and his colleague S was being made redundant. He was also told Ms. C would continue the EIA work. There was no issue with his work or his level of salary but he was not informed why he had been selected. He left that day.

He spoke to the respondent's third witness about his redundancy but was none the wiser. He gave evidence of loss.

On cross-examination he said he accepted there had to be redundancies but felt he was unfairly selected. He felt the redundancies were not transparent. When asked, he said that after the meeting of October 16th he knew his job was at risk. He would have accepted a reduction in hours or salary.

Determination:

Having heard all the evidence by both parties in this case over two days the Tribunal finds that the claimant was not unfairly selected for redundancy. Therefore his claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)