

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

Employee

UD57/2009

against

Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr T. Taaffe

Members: Mr J. Goulding  
Mr J. Maher

heard this claim at Dublin on 15th December 2009

Representation:

Claimant(s): Mairead McKenna BL instructed by Brian P Adams & Company, Solicitors,  
Cormac Street, Tullamore, Co. Offaly

Respondent(s) Mr. John Barry, Management Support Services (Ireland)  
Limited, The Courtyard, Hill Street, Dublin 1

The determination of the Tribunal was as follows:-

#### **Respondent's Case**

The respondent is a facility management business involved in contract cleaning and associated management activities. Between 2006 and 2008 the respondent took over a number of companies and acquired the companies of which the claimant was an area manager.

The Regional Director of the respondent was responsible for operations within the Republic of Ireland. All staff reported to KQ. However the respondent decided that there was a need for restructuring in order to streamline services. The rationalisation process began in March 2008 and it was decided to create another level of management, operations manager. As a result of this there were two Operations Manager positions to be filled, one with responsibility for Leinster and one with responsibility for Connacht and Munster. This meant that staff would report to the relevant Operations Manager instead of KQ.

The Operations Manager positions were filled internally in May 2008. The positions were

advertised at management team level. This position was filled by RF. In October RF resigned, which meant that there were two operations manager positions available because Connacht and Munster were split in two. An announcement was made about these positions on 3<sup>rd</sup> October 2008.

In October 2008 it was decided to create another level of Operations Director between operations manager and regional director. It was also decided that a managing director was needed for all of Ireland. KQ was assigned as Operations Director for Leinster.

On 8<sup>th</sup> October 2008 at a meeting that had been designated by the respondent as a training meeting JD, Human Resource Manager, verbally announced without any prior consultation that a new level or area manager was being introduced below Operations Manager. General information was provided to staff at the meeting and staff were informed that there would be restructuring and reductions of positions at this level. There were no minutes from this meeting.

At the time there were several different positions at this level, 27, and as a result of the restructuring this would be reduced to 14. This was to be implemented by redundancies and an interview process, which the respondent felt was the fairest way to carry out the rationalisation. The role of area manager would be responsible for smaller geographical areas and would report directly to the Operations managers.

JD was informed of the decision to make the announcement while at breakfast on the morning of the 8<sup>th</sup> October 2008. There were to be individual consultation meetings with staff affected by the restructuring to provide them with further information and to establish if they wished to apply for any of the available positions.

On 15<sup>th</sup> October 2008 correspondence was issued to the claimant inviting him to an individual consultation meeting, which took place on 22<sup>nd</sup> October 2008. JD, HRM and LH, Human Resource Director were both in attendance at this meeting.

JD stated at the meeting the claimant did not raise any issues about the positions available or how they were to be filled. The claimant did not indicate that he wanted to remain in his own job. He did not indicate if he would apply for any of the area manager positions available. When the claimant was asked if he had any questions, he asked what would happen to his staff. He was told that they were not part of the restructuring. A list was provided to make staff aware of vacancies in the respondent at the time, and also an information pack, which included a job description. The interviews for the available positions took place on 23<sup>rd</sup> and 24<sup>th</sup> October 2008. The claimant told her that he would revert to her by Thursday lunchtime.

Subsequent to the meeting with the claimant on 22<sup>nd</sup> October 2008 JD did not receive any contact from the claimant until a letter was received from his solicitor. The letter from the solicitor requested information about the proposed restructuring and the positions available. On receipt of this letter it was her understanding that the claimant was not applying for any of the positions. This letter was forwarded to the company's solicitor for reply.

JD stated that on 30<sup>th</sup> October 2008 she telephoned the claimant to inform him that as he did not apply for any of the available positions he was being made redundant and he just said okay, that's fine.

Under cross-examination JD agreed that the meeting of the 8<sup>th</sup> October 2008, at which the announcement about restructuring was made, had been arranged as a training meeting. JD also

agreed that it was a short meeting with a power point presentation. AH had been appointed as a Operations manager the night before the meeting. JD also explained that there was no agenda for the meeting of the 8<sup>th</sup> October 2008 and no materials or handouts were distributed to the attendees. JD accepted that this meeting was probably the first time the claimant had been made aware that there were redundancies afoot.

When asked whether she was the note taker at the consultation meeting she said that LH went through the script and that she took the notes. JD contended that the claimant did not inform her that he wanted to discuss the issue with his family and the only thing he said was about the payroll issue.

On the 23<sup>rd</sup> October 2008 JD received a letter from the claimant's solicitor requesting information about the restructuring and the proposed positions available. The respondent did not revert back with the information requested as the information had already been provided in the job description included in the pack.

The solicitor's letter on behalf of the claimant was sent to the company's solicitor for a response. There was no consideration given to postponing the interviews or the filling of the vacancies. It was her understanding that the letter was an indication that the claimant did not wish to apply for the job. JD confirmed that she was aware of the contents of the letter while deciding on the interviews.

During direct evidence, LH, HR director, informed the Tribunal that she had not been at the meeting on the 8<sup>th</sup> October 2008 when the announcement about restructuring was originally made. It was her understanding that the consultation meeting of the 22<sup>nd</sup> October 2008 was to discuss the restructuring and its implications with the staff affected and to give them the opportunity to ask any questions they may have. She prepared a scripted document that was to be used at the consultation meetings to ensure consistency with information provided to staff during their individual consultations. She chaired the meeting of 22<sup>nd</sup> October 2008 and JD took the notes and these notes were an accurate description of what took place at the meeting.

Under cross-examination, the claimant's representative asked LH whether it was explained to the claimant why his role was being made redundant. LH said that the restructuring and geographical areas would have been explained during the consultation meeting. LH agreed that this was not in the notes of the meeting. LH told the Tribunal that her involvement with the restructuring situation in Ireland began when the structure and redundancy process had already been decided.

LH told the Tribunal that the interview process and subsequent filling of positions had to be completed by the end of October 2008. She said that this deadline had been agreed with the board and shareholders at a previous board meeting. She could not recall when the board meeting had taken place.

### **Claimant's case**

The claimant told the Tribunal that he was an area manager with one of the companies that was purchased by the respondent. He brought staff and contracts worth a half million to the respondent. When the respondent took over the company he did not receive a new contract and continued working under the contract from his previous employer. He was responsible for submitting and totalling timesheets for payment of staff, training staff, recruiting staff nationwide.

In July 2008 an issue arose as a result of payroll operations being moved to Leeds. Sixty-six staff were not paid. He contacted RF and that evening sixty-six cheques were issued to the staff affected. In September 2008 he attended a meeting in Dublin about payroll and at the meeting the claimant said that if the problems with payroll were not resolved the respondent would lose staff and its reputation. Subsequent to the meeting the claimant received a letter thanking him for his input.

After the meeting in September 2008 RF said he resigned. She then withdrew her resignation and this withdrawal was not accepted. The claimant received a telephone call from RF saying that she was fired and telling him to watch his back. It was his understanding that the respondent was in a good financial position and he received correspondence from the respondent that it had grown 21%. At no stage before the restructuring announcement on 8<sup>th</sup> October 2008 did anyone speak to him about his role or how he felt things could be done better in his area.

In relation to the meeting that took place on the 8<sup>th</sup> October 2008 he was notified of the meeting by telephone the day before. The announcement regarding the restructuring and the possible redundancies was a shock to him. He was shocked when it was also announced that two employees, HD and AH, were appointed as operations managers, as he had expressed an interest in this position in March 2008. At the end of the meeting he asked JD if wages would be affected and she told him that they would. The day after the meeting he spoke to HD, who was responsible for administration in Limerick. She said that she could see no problem with his position being retained and when he asked about the redundancies she told him that it was oversubscribed. He took comfort from his conversation with HD.

He felt there was probably a campaign to get rid of him because of the issues he raised about payroll. His next communication with the respondent was a letter issued on 15<sup>th</sup> October 2008 inviting him to attend a consultation meeting on 22<sup>nd</sup> October 2008. He did not receive this letter until 21<sup>st</sup> October 2008 but he received a telephone call informing him on the 20<sup>th</sup> October 2008.

His understanding of the letter was that the meeting was being held to tell him how the respondent was going forward. He did not realise that his position would be affected because of the conversation he had with HD.

In relation to the consultation meeting on the 22<sup>nd</sup> October 2008 he did not bring a representative with him. He was not a member of a trade union. His recollection of this meeting was that JD did all the talking. At the meeting, there was a document produced that showed area manager positions. The claimant said he was very hurt when the operations manager's position was given to someone else when it was the job that he did.

The role of area manager was not explained. He was given a job profile but was not given an opportunity to read it during the meeting. There was no discussion about the terms and conditions of the role of area manager. He was told to go off and consider it but was none the wiser about the position of area manager. At the end of the meeting he was told that he had to respond by Thursday 23<sup>rd</sup> October 2008. He did not believe his position was redundant and he thought that his job was okay.

After the meeting of the 22<sup>nd</sup> October 2008, the claimant discussed the situation with his wife and family. He then discussed it with his solicitor. His solicitor sent a letter to the company on his behalf seeking further information about the role of area manager and the positions available. The claimant felt that there would be a response to this letter and at this stage had not decided if he

would apply for the area manager position.

The claimant did not receive a response to the solicitor's letter and on 30<sup>th</sup> October 2008 he received a telephone call from JD informing him that he was redundant with effect from the nextday. He was not informed that he could appeal the decision. On the same day he received a response to his solicitor's letter saying that there was no other substantive issues.

The claimant contended that JD's notes were not an accurate account of what took place at the meeting of the 22<sup>nd</sup> October 2008 and LH did not speak at this meeting. He understood this meeting was taking place to discuss the role of area manager and possible redundancies.

In cross-examination he stated that he did not apply for the position of operations manager in March 2008 because he was so busy and he did not need it at that time. He believed that at a meeting in relation to payroll that his cards were marked. He accepted that a letter he received after this meeting was very positive. HD worked in Limerick after she was appointed operations manager and prior to that she did not know what role she had. He agreed he spoke to HD on 9<sup>th</sup> October 2008 and she was inundated with applications for voluntary redundancy. He never had any involvement with JD apart from the meeting in September and at that time he reported to RF. He could not recall if he spoke to Ms. S when RF left on 3<sup>rd</sup> October 2008. Subsequent to the meeting of 8<sup>th</sup> October 2008 he did not contact anyone to seek more information. He had never been called to a meeting like the meeting on 22<sup>nd</sup> October 2008. At the meeting JD did the talking and LH did the writing. He did not recall raising the issue of operations manager at the meeting. Terms and conditions were not discussed at the meeting and money was not discussed at this meeting. After the meeting he did not think that anyone knew what was happening. He recalled receiving a statement of terms and conditions of regional manager by fax from RF on 8<sup>th</sup> September 2008 with a view to having it signed immediately and sent back. He did not sign it and he discussed with other workers who said they were not signing it.

Prior to 8<sup>th</sup> October 2008 he did not have any dealings with the respondent regarding rationalisation.

## **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 they acted reasonably and fairly towards the claimant in addressing that situation. It is found that a redundancy situation arose and that the respondent did not behave reasonably and fairly with the claimant and the Tribunal sets out hereunder the reasons why it is so found.

1. Failed to consult or engage with the claimant prior to announcing a restructuring of the company
2. On the 3<sup>rd</sup> October 2008 appointed two operations managers without giving any of its suitable employees, including the claimant, the opportunity to apply for these positions.
3. Implemented the restructuring process insofar as the claimant was concerned in an unfair and unreasonable way in that it
  - (a) failed to properly consult with the claimant on the procedures that it adopted
  - (b) implemented these procedures without giving the claimant a reasonable opportunity

- or time period to consider them
- (c) completed the redundancy process without informing the claimant of his right to appeal the decision.

Section 6(3) of the Unfair Dismissals Act 1977 as amended by Sections 5(b) (a) of the 1993 Act 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 do so

to the reasonableness or otherwise of the conduct (whether by act or by omission) of the employer in relation to the dismissal”.

The Tribunal therefore finds that the redundancy of the claimant by the respondent was an unfair dismissal within the meaning of the Unfair Dismissal Acts, 1977 to 2007 and awards him compensation of €87,000.00. The Tribunal confirms that the award is inclusive of the redundancy payment of €3,000.00 made to the claimant on termination of his employment.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN