

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE

UD56/2009

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. During 2006 and 2008 the respondent took over a number of companies and acquired company C of which the claimant was a director. He was not a director of the respondent, he took on a managerial position within the respondent. In February 2007 the respondent purchased another company M.

The Regional Director of the respondent, KQ 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 two Operations Manager positions were 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.

Two Operations Manager positions were filled internally in May 2008. The positions were advertised at management team level. The claimant originally applied for one of the positions but later withdrew his application. This position was filled by RF. In October RF resigned and as a result of this 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.

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

On 8<sup>th</sup> October 2008, at a meeting which was designated by the respondent to be a training meeting, JD, Human Resource Manager, verbally announced without any prior consultation that a new level below Operations Manager was being introduced. JD stated that there was general information provided to staff at the meeting and staff were informed that there would be restructuring and a reduction in staff 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 ask if they wished to apply for any of the available positions.

On 15<sup>th</sup> October 2008 the claimant received correspondence inviting him to an individual consultation meeting, which took place on 21<sup>st</sup> October 2008. JD, Human Resource Manager and LH, Human Resource Director were both in attendance at this meeting.

JD stated at the meeting that 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, the only issue he raised was the problems encountered when the payroll system relocated to Leeds. A list was provided for employees to inform them 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.

Subsequent to the meeting with the claimant on 21<sup>st</sup> October 2008, JD stated that she 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.

On 30<sup>th</sup> October 2008 JD telephoned the claimant to inform him that as he did not apply for any of the available positions he was being made redundant. She could not contact him directly and therefore left a voice message informing him that he was being made redundant. Later that day she received a telephone call from the claimant who was extremely agitated about the voicemail he received. He told her that it was very unprofessional.

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 an 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 mentioned was 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. JD said the company 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 21<sup>st</sup> October 2008 was to discuss the restructuring and its implications with the staff affected and 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 21<sup>st</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, when asked whether it was explained to the claimant why his role was being made redundant. LH responded 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. Her involvement with the restructuring situation in Ireland began when the structure and redundancy process had already been decided.

The interview process and subsequent filling of positions had to be completed by the end of October 2008. 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 a regional manager with the respondent and was an employee since 2003. Prior to this he was a director of his own company. The respondent bought his company and he became an employee. He covered areas from Cork, Kilkenny, Waterford, Carlow. He had responsibility for the laundry and clean up operation. He was also responsible for

recruitment, holiday planning, health and safety, equipment purchase and staff liaison.

In March 2008 he became aware of a vacancy for an operations manager. At the time, he reported directly to KQ and he raised the job opportunity with him and discussed applying for the position. He got a very strong feeling that he was being discouraged from applying for the position. He was not aware of any other operations manager vacancies until the 6<sup>th</sup> October 2008.

At no stage before the restructuring announcement on 8<sup>th</sup> October 2008, did anybody 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 phone the day before. The announcement about the restructuring and the possible redundancies was a shock to him. He was shocked when it was also announced that there had been two employees, HD and AH, appointed to operations managers, as he had expressed an interest in March 2008. He did not make a complaint because he felt there was no stopping the train that was coming. He continued to work and said that the company was extremely busy.

In relation to the consultation meeting on the 21<sup>st</sup> October 2008 he did not know what to expect and did not bring a friend or representative with him. He was not a member of a trade union. His recollection of this meeting was that JD did all the talking other than a brief introduction and thank you from LH.

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 away 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 either the day after or 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 21<sup>st</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 respondent 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 voice message on his phone from JD informing him that he was redundant with effect from the next day. 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.

Under cross-examination, the claimant was asked why he thought he was being dissuaded from applying for the operations manager position that was available in March. The claimant said that subsequent to his discussion about the position with KQ, he became aware that KQ's wife RF, had been appointed to the position and this was the reason.

In relation to the available positions announced on 6<sup>th</sup> October 2008 the claimant said that he would have discussed them at the meeting on the 8<sup>th</sup> October 2008 but at this meeting an announcement was made that the operations manager positions had been filled by AH and HD. The respondent's representative asked the claimant why did he attend the consultation meeting on his own when he had been advised in the letter of the 15<sup>th</sup> October 2008 that he could bring somebody with him. The

claimant felt he had a good history with the respondent and did not feel that he needed to bring anyone to the meeting with him.

The claimant contended that JD's notes were not an accurate account of what took place at the meeting of the 21<sup>st</sup> October 2008 and apart from the introduction, LH did not speak at this meeting. He understood this meeting was taking place to discuss the role of area manager and possible redundancies. He did not ask any questions at the meeting because he did not have any information from which to form or prepare questions for JD and LH.

## **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 €127,350.00. The Tribunal confirms that this award is inclusive of the redundancy payment of €6,804.00, which was made to the claimant on termination of his employment.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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