

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.
UD1064/2008

EMPLOYEE - Claimant
Against

EMPLOYER - Respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr. J. Hennessy
Ms. A. Moore

heard this claim at Portlaoise on 27th March and 14th September 2009

Representation:

Claimant: Ms. Miriam Hamilton, SIPTU, 3 Peppars Court, Portlaoise, Co. Laois

Respondent: Mr. Ambrose Downey, IBEC, Gardner House, Bank Place, Charlotte Quay,
Limerick

The determination of the Tribunal was as follows:

Respondents Case

The respondent company is a builders' supplier, suffering a downturn in business as a result of the economic crisis in the construction industry. The group's turnover is down by 60% and six branches have closed in the last few years.

The Portarlinton Branch Manager has been with the branch for 22 years. In April 2007 the Portarlinton branch moved location from Station Road to a larger premises on Edenderry Road in anticipation of the continuing boom. The claimant was employed in 2002 as a general operative where he remained until he was appointed transport manager in late 2006/early 2007. The job of transport manager was created at this time to manage the transport of supplies and lorries in and out of the yard. The yard foreman had been doing this job previously but the workload had increased to the extent that the transport manager position was created. The claimant was chosen for the job because he was "a faithful servant and good worker." The new position was a great success when

the company was busy, after the branch moved to the Edenderry road premises business was not the same.

When the company was moving premises there were 20 people employed, including two extra staff to help with the move. As a consequence of the downturn in business the companies' Head Office performed a review of the branch operations. This review resulted in three redundancies, an office worker, a general operative and the claimants. The claimant's position was created during a boom time for the branch and now his position is redundant, the yard foreman has re-taken the duties.

On the 22nd of August 2008 the Branch Manager and the HR Manager told the claimant he was being made redundant. The HR Manager told the claimant he would return the following week with the details of the redundancy package. The claimant was informed that his job no longer existed. The following week the claimant was offered statutory redundancy, which he refused. The notice of redundancy was given and the claimant was paid in lieu of notice, there was no more contact with the claimant.

When the position of Transport Manager was created there was a verbal agreement between the parties, there was no formal application process or a new contract with a change to his Terms & Conditions. The claimant was not informed that he would lose any service by taking the new position; it was not a consideration at the time. The claimant was given an increase in pay including a bonus payment. The claimant continued to perform his old duties as well as the new Transport Manager duties; his work and pay did not significantly change. The claimant was not given any re-deployment options when he was made redundant.

The Branch Manager does not recall if the claimant was offered representation at the meeting. The claimant asked to work out his notice but was not given an answer. The last day the claimant worked he was asked to sign the redundancy RP50 form giving him 2 weeks redundancy for service plus a bonus week. The claimant requested an extra week on top of the statutory entitlement, he proceeded to leave the meeting to make a call, and on his return he would not accept the redundancy package on offer. The claimant was contacted repeatedly by phone during the break in the meeting requesting that he return, the Branch Manager admits this could have been intimidating. The claimant got in contact with a union representative that was in the area but at that stage as far as the Branch Manager was concerned the meeting was over.

The HR and Safety Manager for the respondent, states that in October 2007 they foresaw the downturn in the economy and looked at rationalisation for the whole group including the Portarlinton Branch. Four Transport Managers including the claimant were made redundant between August and December 2008. The HR Manager's role in the claimant's redundancy was to ensure the redundancy payments were made and to help the Branch Manager inform the claimant. The same week as the claimant, the HR Manager had to inform forty people across the group in similar positions that they were being made redundant. The three positions made redundant in the Portarlinton Branch no longer existed and the duties were absorbed within the company. At the first meeting on the 22nd of August 2008 the HR manager outlined the rationale for the claimant's redundancy, that all Transport Manager positions were being made redundant, he issued the claimant with the RP50 redundancy form, went through the details of the form and offered an ex-gratia additional week for each year of service. The HR Manager advised the claimant that he would be back the following week and any grievances and issues could be dealt with, at the first meeting the claimant did not ask for representation. The following week the HR manager and the Branch Manager met with the claimant, one week's notice had been worked and it was decided that the remaining three weeks notice should be paid

in lieu, which was added to the redundancy payment. The claimant did not sign the RP50 form so the redundancy payment could not be given to the claimant. The claimant asked to make a phone call, on his return the claimant said he would accept the payment if an extra 2 weeks pay was given. The claimant said he was unhappy with the terms but did not ask for representation, he left the meeting to consider his position and returned with the branch shop steward and proceeded to go through the RP50 form again. The respondent could not facilitate the extra payment the claimant requested.

The CEO of the company in consultation with the Branch Manager made the final decision on the claimant's redundancy. The HR Manager is positive that the Branch manager would have looked at re-deployment before the claimant was selected for redundancy. There was 5 general operatives employed alongside the claimant who was originally employed as a general operative, last in first out principals were not applied. There was no grievance complaint made by the claimant at the initial meeting. The HR Manager did not receive e-mail from SIPTU as he was travelling around the country that week, which is also the reason he could not confirm an exact date for the follow up meeting with the claimant. As far as the HR and Branch Manager were concerned the claimant had accepted the terms of the redundancy, they concluded the meeting without waiting for the union representation as they assumed the claimant's grievance was about the monetary value of the redundancy and not the selection.

The union representative was the acting official for midlands construction from June 2007. The union representative received a phone call from the claimant stating that he had 15 minutes to sign the RP50 form or the offer was off the table. The union advised to postpone the meeting and only advised to ask for more money as a delay tactic, he was aware that the claimant was unhappy with the selection process.

The shop steward worked in the Portarlinton branch as a security man. He was aware that the claimant's job had changed significantly when he accepted the job as Transport Manager. He was not asked to represent the claimant in any of the meetings. In the week between the first and second meetings they discussed other job options, as there was so much work to do. The claimant left the second meeting very upset so the shop steward gave him his phone to call his union representative. The call was returned so the shop steward entered the meeting to inform the claimant that his representative was on the phone, he stayed with the claimant to ensure there was no pressure being applied to sign the RP50 form. The claimant asked for an extra weeks redundancy payment. He still had plenty of work and he wanted to keep his job. The claimant wanted to work his notice but the respondent insisted he finish up that day. The HR manager would not wait until the union representative could come to the meeting. The shop steward was not notified in advance of either of the meetings. The claimant did not accept the offer because he wanted to keep his job. The claimant's duties were performed by the remaining staff; the Yard Man took over his original duties.

Claimant's Case

The claimant worked as a general operative at first. Later he was appointed transport manager. He did not seek the role. As transport manager he had additional duties but up to his last working day he still did general operative work. He was not informed that once he took on the role of transport manager the last in first out policy would no longer apply to him.

The review of the operation was carried out unbeknownst to him. He was not asked for his views

and he never saw a summary of the review. At the first meeting he was dumbfounded when he was given a months notice. He was given no opportunity to appeal the decision. He was a hard worker and never refused to do any task. When he was given notice, he understood that he would work for four weeks. He hoped that during that time the union would sort the matter out.

The union representative phoned and emailed the HR manager but got no reply. The HR manager would not answer the union representatives calls. He got no notice of the second meeting on 29 August 2008. He was called up the stairs and told to sign the redundancy payments form. He was offered an extra week as an ex gratia payment. He left to talk to the shop steward. The shop steward phoned the union representative. While he was waiting for the union representative to phone him the branch manager phoned him three times demanding that he come back up stairs and saying that the HR manager had a busy schedule. They were not prepared to wait for 15 minutes. When he went back into the meeting he asked to work his notice but was told 'you finish today'. He was put under pressure to sign the form. To give himself some time he asked for an extra weeks redundancy payment and was told he was nuts. The meeting ended without him signing the form.

He was not asked to revert to being a general operative and accept a pay cut. No other options were discussed with him.

Determination

The Tribunal carefully considered the evidence adduced in this case. The Tribunal accepts that the respondent needed to review its operations. However in its dealings with the claimant there was a complete absence of fair procedure. He was not put on notice that the respondent was considering making the position of transport manager redundant. The claimant was not given notice of the meetings at which his employment was terminated and as a result did not have his union representative attend the meetings with him. The Tribunal finds that the claimant was unfairly dismissed. The claim under the Unfair Dismissals Acts, 1977 to 2005 succeeds. The claimant is awarded €7700.00.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)