

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

EMPLOYEE - claimant

CASE NO.

MN690/09
UD670/09

Against

EMPLOYER - respondent

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr. J. Goulding
Mr. S. O'Donnell

heard this claim at Naas on 4th February 2010.

Representation:

Claimant: Mr. Cian Moloney BL instructed by Wilkinson & Price, 53 South Main Street,
Naas, Co. Kildare

Respondent: Mr. Stephen Sands, Construction Industry Federation, Construction House,
Canal Road, Dublin 6

The determination of the Tribunal was as follows:-

At the outset of the hearing the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was withdrawn.

Respondent's Case:

The Contracts Manager gave evidence. He works in the Leinster region. The respondent is a civil engineering and building contractor. When work on the Carlow scheme came to a closure thirty staff from that scheme, which included the claimant were transferred to the Portlaoise scheme. These were surplus staff. At that time the respondent had been tendering for work. The expectation was that if tenders for other schemes came to fruition that these staff could be accommodated on one of the schemes. Unfortunately the tenders did not come to fruition. In the period August to December 2008 eighteen staff were made redundant.

The claimant was initially employed as a technician on the Carlow scheme assisting the management of the laboratory. He liaised between production and laboratories. The claimant was in the first tranche of four to be let go. He would have been offered other work if it had been available.

On 9th October 2008 the witness spoke to the claimant and informed him that he was being let go. The claimant was shocked and taken aback. He was aware that the claimant contacted the HR Manager following that decision. Three to four weeks later the claimant sought a reference.

He rated the claimant as a good worker with a good demeanour.

Under cross-examination the witness contended that he informed HR that the claimant was no longer required on the Portlaoise project. He was surplus to needs on the project. The claimant liaised between the production staff and the laboratory technicians. Heads of departments had done this work. It was part of their daily work. The claimant was transferred to the Portlaoise scheme in the expectation of work coming on stream. Work was tight on the ground. The respondent did not secure work for which it had tendered. The Portlaoise scheme was overstaffed. During the summer months students were taken on for work experience.

The witness told the Tribunal that he had discussed the staffing situation with his Line Manager. A list of those being let go was forwarded to HR four to six weeks prior to the claimant's leaving.

The HR and IR Manager gave evidence. When work concluded on Carlow project staff were sent to the Portlaoise project in the hope that tenders for projects would be successful. The Portlaoise project had an excess of staff.

The claimant telephoned him following the decision to let him go. He had taken out a lease on a house in Portlaoise and needed to move his belongings to his home place in Kerry. The witness told the claimant that he could keep the company's jeep over the weekend to move his belongings. The witness arranged to meet the witness the following Tuesday. That meeting never took place. He had problems contacting the claimant. Eventually he left a message with his parents.

The claimant's father had previously worked for the respondent. The claimant's father contacted the claimant's Line Manager following the claimant being let go from the company. A decision was made to pay the claimant an extra month's pay. The company had no issue with the claimant. He was aware that the claimant secured a good reference form the Quality Manager. The claimant was subsequently in touch with the Recruitment Manager with a view to securing work on a Castleisland project.

Under cross-examination the witness said he was based in Head Office and that he often visited sites. He has worked for the respondent for ten years. The strategic decision is to hold on to staff in the expectation that further work is forthcoming.

In October/November 2008 the recession hit hard. He had been in touch with the Director of projects. He knew the company was taking a risk keeping staff in the expectation of securing further contracts. The project manager decides who to let go according to his workload. He was aware of who was being let go. The witness contended that grievances are invoked through direct Line Managers. It was not unusual for him to deal with an appeal.

Claimant's Case:

The claimant gave evidence. He initially worked on the Carlow project. Upon the completion of that project the Project Manager of that scheme told him that he was being transferred to the Portlaoise project. Two to three engineers also moved at that time. He worked on the quality side, liaised with the laboratory, ordered and outsourced materials.

At approximately 3 o'clock on 9th October 2008 he received a telephone call from the Project Manager. He was told that his job was gone and there was no more work available. The conversation lasted two/three minutes. The Project Manager was very blunt. The claimant had been extremely busy that day and his understanding was that there was forty kilometres of work still remaining on the project. He was told to go home. He subsequently telephoned the HR Manager and did so every few days. He left his number with his Line Manager, as he was interested in a job on the Castleisland project.

He did not accept that work was not available. There was plenty of work out there. He felt the company could not cope with the Portlaoise project. While he was working in Portlaoise he had to train in a student and he was still there when the claimant was let go. It was a cheaper option for the company as the student travelled in his own car.

The claimant's father worked for the respondent for a number of years but had resigned from his position many years prior to the claimant's commencement of employment. The claimant's father did not depart the company on good grounds. The claimant felt that this could have influenced the respondent decision to let him go. He was unemployed for one year and in receipt of the job seeker's allowance. He has since secured work in England.

Under cross-examination the claimant contended that he was constantly in touch with the company following his being let go and that no meeting had been arranged to discuss his concerns. He felt he was going around in circles. He believed the ex gratia payment sent to him was owed to him as he had worked long hours on the Carlow project. He had been writing to the company until March 2009 as he was trying to get to the bottom of things.

Determination:

The Tribunal carefully considered the evidence at the hearing. The Tribunal is satisfied that a genuine redundancy situation existed. The Tribunal finds that the manner in which the claimant was let go was abrupt and insensitive. The claimant should have been given notice of the respondent's intention to terminate his employment at least two to three weeks before his actual termination date. The claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)