

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE - *claimant*

UD919/2009

against

EMPLOYER - *respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms P. McGrath BL

Members: Mr M. Murphy  
Mr J. Moore

heard this claim at Navan on 19th February 2010

Representation:

Claimant(s) : Mr. Blazej Nowak, Polish Consultancy Enterprise, 19 Talbot  
Street, Dublin 1

Respondent(s) : Mr. Eamonn McCoy, IBEC, Confederation House, 84/86 Lower  
Baggot Street, Dublin 2

### Respondents Case

The head of retail of the respondent company gave evidence that due to the economic downturn the profitability of the company had decreased substantially and a decision was taken to reduce costs. The company operated 53 stores countrywide. It was necessary to reduce the wage bill by €1 million and accordingly a decision was made to make all morning pack supervisors redundant. The company had created this position during the boom years and employed a total of 10 morning pack supervisors in its stores throughout the country. These supervisors supervised deliveries of stock in the early morning from 6am to 9am. Deliveries had reduced from seven days per week to a current total of four per week. The work of the morning pack supervisors was subsumed by sales staff within each department in the company following the position being made redundant.

Resulting from this decision the claimant who had commenced employment in August 2007 as a retail associate and was subsequently promoted to the position of morning pack supervisor in October 2008 was made redundant. Following the claimant's promotion in October 2008 he had received a salary increase. A regional manager from the company gave evidence that he informed

the claimant that he was being made redundant. The decision to make him redundant was not related to his work performance. He was paid his minimum notice entitlement and also received an ex-gratia payment following the termination of his employment.

In response to questions from the Tribunal the regional manager accepted that the claimant was not offered his previous position of retail associate when he was made redundant. He was not aware if the company had sought voluntary redundancies in general prior to making the claimant redundant. There was no consultation carried out with the claimant prior to him being made redundant and one employee who the claimant had trained as a retail associate remains in employment with the company.

### **Claimant's Case**

The claimant gave direct evidence that he commenced working for the respondent company in August 2007 as a retail associate. He was promoted to the position of morning pack supervisor in October 2008. He was given new duties following his promotion but also still carried out many of his old duties. On the 19 February 2009 he met with the regional manager and was informed that he was being made redundant immediately due to the recession. He was not informed that he could have a witness or a representative with him at that meeting. He accepted that he received a severance payment following his dismissal. He has made many attempts to secure employment since his dismissal but to date he has been unsuccessful.

### **Determination**

The Tribunal has carefully considered the evidence adduced. The uncontradicted evidence is one of a severe downturn in the retail business of the respondent company. The Tribunal recognises that the respondent company is entitled to reorganise and re-structure its business to avoid making losses. The bottom line has to be commercial viability.

Inevitably the question of redundancies came to be considered at a central management level. In looking at the 53 stores the position of morning pack supervisor was identified as becoming redundant in circumstances where weekly deliveries were being reduced from seven to the current figure of four per week. It seems now that the morning pack duties are being done as much during opening hours and not in the three hour period from 6am to 9am.

The particular circumstances of the position holders does not seem to have been taken into consideration when making the decision to make the positions redundant. The decision was made centrally and applied locally without any attempt to look at what re-structuring options might be open to management.

In these circumstances the claimant was notified that his job was redundant and his services were no longer required. The claimant's principal grievance with the company was the fact that he had been a diligent and hard working employee for over a year and a half. His employer had no criticism to make with respect to his performance and indeed had increased his duties and the trust placed in him some five months previously by giving him the supervisory position of morning pack supervisor. ( A 30 hour position which it is noted was not yet permanent and which was still in the probationary stage.)

The claimant stated and it was not disputed that there were other employees in the premises who had been employed for lesser periods than the claimant and certainly would not have the same

knowledge and skills as he might have had. The claimant maintained that had he been asked to take on his previously held position of retail associate for the pertinent pay and hours he would have preferred that to being made redundant.

The Tribunal notes that in its own contract of employment the respondent should have taken such facts as skills and suitability as well as length of service into consideration. This clearly was not done on looking at each individual workplace. The employer has to demonstrate that selection for redundancy is done reasonably. The respondent company has failed to demonstrate reasonableness and fairness in all the circumstances.

The Tribunal finds that the claimant has succeeded in his claim and notes that the claimant had sought re-instatement. However the Tribunal is of the view that compensation is the appropriate remedy and awards the claimant the sum of €10,000 under the Unfair Dismissals Acts 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

