

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE –**Appellant**

RP838/2009

against

EMPLOYER -**Respondent**

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K.T. O'Mahony B.L.

Members: Ms. M. Sweeney
Mr. J. Flavin

heard this appeal at Cork on 30 March 2010

Representation:

Appellant:
In person

Respondent:
Mr. Killian O'Mullane, Murphy English & Co. Solicitors,
Sunville, Cork Road, Carrigaline, Co. Cork

The determination of the Tribunal was as follows:

The respondent, which supplies CCTV systems into both the domestic and British markets, recruited the appellant as managing director in January 2005. The appellant has over twenty years experience in the sale of CCTV systems and had his own business in this field when he was recruited. The employment was uneventful with sales volumes doubling over the period of the appellant's employment. At its height the respondent had 30 employees. Over 2008 sales volumes began to decline, especially in the domestic market, with performance against budget being even worse. This resulted in the proprietors of the respondent being forced to implement a cost reduction programme.

From late September 2008 the proprietors wanted to implement a twenty per cent pay cut which was resisted by the appellant. He expressed his preference for a redundancy package. The proprietors were not prepared to offer such a package as they considered him to be their most important employee and the face of the respondent in the British market. Eight employees, including several members of the sales team, were made redundant in November and December 2008.

In December 2008 the proprietors began to hear rumours that the appellant was going to leave their employment. In November 2008 the appellant was interviewed for the position of Sales Director, Europe by the supplier of some 85% of its equipment. The proprietors then began to have concerns that the appellant had used his meeting with the supplier to suggest that the respondent was getting into difficulties, would be giving up the suppliers products from July 2009 and that the appellant had sought to make arrangements for the supplier to supply product to him thus by-passing the respondent.

The proprietors became further concerned that the appellant was seeking to recruit staff from the respondent in order to set up in business on his own account. A meeting for this purpose was organised for 30 January 2009. On 29 January 2009 one of the proprietors sent an email to the appellant calling him to a meeting on 2 February 2009. The respondent's position is that the proprietors hoped to be in a position to put allegations of misconduct to the appellant but were unable to do so as they were awaiting information. The appellant asked for a redundancy payment at the meeting but this was again rejected. He was told that things weren't right and was asked to go away and reflect on the situation. The appellant's position is that at this meeting a redundancy payment was offered to him.

On 3 February 2009 the UK based director of the respondent and a colleague came to the respondent's offices to deliver information to the proprietors to confirm their suspicions. The respondent also received an email from the supplier's Sales Manager confirming that the appellant had been asking the supplier to deal directly with him. The proprietors put these allegations to the appellant in a phone call later on 3 February 2009. The appellant then consulted his solicitor about these allegations. On 4 February 2009 the appellant met the proprietors and was dismissed, without notice, on foot of the allegations.

Determination:

The Tribunal does not accept that the appellant was offered a redundancy package at the meeting with the proprietors on 2 February 2009, or indeed at all. The Tribunal is satisfied that the appellant was dismissed without notice on foot of the allegations put him in regard to his conduct in attempting to target the respondent's supply of product from the supplier and to entice the respondent's staff to come and work with him.

Section 14 of the Redundancy Payments Acts, 1967 to 2007 provides at subsection 1 that an

employee who has been dismissed

“shall not be entitled to redundancy payment if his employer, being entitled to terminate that employee’s contract of employment without notice by reason of the employee’s conduct, terminates the contract because of the employee’s conduct

It follows that the appellant is disentitled to a redundancy payment because of his conduct. Accordingly, the appeal under the Redundancy Payments Acts, 1967 to 2007 fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)