

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE -*claimant*

CASE NO.
UD642/2009

Against

EMPLOYER - *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B.L.

Members: Mr. R. Murphy
Ms. A. Moore

heard this appeal at Navan on 3rd February 2010
and 8th of April 2010

Representation:

Appellant : Ms Hilary O'Connor, Maurice Leahy Wade & Co. Solicitors, Archway House, The Plaza, Swords, Co. Dublin

Respondent: Mr. John Barry, Management Support Services (Irl) Limited, The Courtyard, Hill Street, Dublin 1

The decision of the Tribunal was as follows: -

Respondent's Case

The Managing Director (CD) explained that the respondent is a timber frame manufacturing company that designs and manufactures Timber frames for houses and Roof Frames (trusses). The company employed manufacturing staff as well as sales representatives and designers. The claimant was employed as the Technical Director with the respondent, responsible for all of the design aspect of the company. The downturn in the economy severely affected the respondent as they mainly produced products for the housing market. The claimant was a member of the Board of Directors and was aware of the financial difficulty the respondent was in. The respondent had a plan in place to rationalise and cut the costs of the respondent, which meant most of the designers, sales staff and manufacturing staff had been made redundant.

The respondent notified the claimant that the position he held of Technical Director was being

made redundant. The respondent planned to close the truss portion of the company and had made all the staff concerned redundant. The respondent then decided to keep it operational so offered the claimant the position of a-truss designer which the claimant refused. The claimant suggested that he could take up the position of Financial Director as he had responsibility for this area in the initial years of his employment. This was not a feasible option as the Financial Director currently employed was a chartered accountant and the son of one of the owners (JH) of the respondent. The claimant would not have the experience to take over from the timber frame designer as the design jobs had to be completed quickly. It was clear there were no alternatives for the claimant so they discussed a redundancy package, the claimant was not happy with the redundancy package on offer. The respondent is not yet in profit and the claimant has not been replaced.

Cross-Examination

The Managing Director is not aware of any plans to make the claimant a shareholder. When the new Financial Controller took over he increased the salary of the then Managing Director (JH) without consulting the shareholders. The instruction to increase salaries is not normally authorised by the Board. This initially caused friction but was quickly resolved. The claimant believed that the problems within the respondent were caused by the friction between the management and not the result of the recession in the economy. During the period of the dispute an owner (JD) requested that the claimant oversee the financial transactions of the company.

The positions to be made redundant were identified and then it was discussed with the person concerned. The claimant's position being made redundant was discussed between the shareholders prior to discussing it with him on the 15th of January. As the respondent expanded a Financial Controller (BH) was employed as the claimant was unable to do this role as well as being the Technical Director.

The Financial Controller (BH) of the respondent commenced employment in 2005. BH was employed to put the accounts in order. As the company expanded the claimant and the accounts assistant were not qualified or resourced adequately to handle the volume of work. There were significant issues with the accounts, which BH as a chartered accountant was able to rectify. The income of the respondent dropped dramatically due to the economic downturn and as a means to keep the company trading, redundancies had to take place in order to cut costs. The decrease in income was always discussed at Board meetings so the claimant was aware of the precarious situation the respondent was in. BH was involved in the dispute between the shareholders concerning JH's salary increase and the paying of debts from the deposit account, but this was quickly resolved when the details were explained to all concerned.

Cross-Examination

The Financial Controller always had a good working relationship with the claimant despite minor disputes over cost cutting measures. BH was employed to sort out the respondent's accounts not to assist the claimant. BH had no input in the decision to make the claimant redundant.

Claimant's Case

One of the owners (JH) of the respondent employed the claimant to operate the truss design area of the respondent. The claimant was the Technical Director with responsibility for the accounts assisted by an accounts assistant. As the profits increased and the respondent expanded the accounts role became too onerous so a chartered accountant was employed to take over this role. The

accountant (BH) was not brought in to assist the claimant but to take over as Financial Controller. As the economy and the respondent's profits collapsed the claimant was asked for cost cutting suggestions but did not come up with anything so the respondent asked the accountant. The dispute between the shareholders was due to the salary increase given to an owner (JH) not due to the employment of BH. It was the owners and shareholders of the respondent who decided the claimant's position had to be made redundant.

Another of the owners (JD) is a silent partner only visiting the respondent once every 3-6 months. There were never any plans to make the claimant a shareholder as far as the owner is concerned. There would be an adjustment period but all the accounts were to be handed over from the claimant to BH. JD asked the claimant to supervise the accounts following the dispute over JH's salary increase. JD made the decision with JH to make the claimant redundant. The claimant rejected alternatives offered to him such as a consultancy position.

The claimant was employed in 1996 as a truss designer with the respondent. The claimant's role expanded into sales, accounts and all aspects of the respondent except timber. The claimant enlisted the help of a local accountant and implemented an accounts package in the respondent. The claimant said 'there was talk' of making him a shareholder. In 2005 BH was employed to assist the claimant in his role as General Manager to assist him in producing any figures he required. The respondent had grown to such an extent that BH was needed solely for the accounts role. The claimant would oversee the accounts work BH produced. The claimant always told JH he should get a salary increase. The claimant was informed about an issue over the deposit account at a Board meeting. The claimant does not think there were any problems with the accounts they were always available if they were required. There was very bad feeling among the shareholders as a result of the salary increase and the movement of funds from the deposit account.

The claimant received a phone call requesting him to attend a meeting off the respondent premises. The claimant was informed that his position was being made redundant in response he asked if there was any alternative. The next morning the claimant contacted CD and asked again if there was any alternative to being made redundant. The respondent offered the claimant the statutory redundancy lump sum. The consultancy position offered was not feasible for the claimant. The claimant took longer with the design process because he took on the more complex designs. There were no procedures put in place following the dispute for the claimant to oversee the accounts.

The last day the claimant worked was the 25th of February. The claimant could have taken on any of the roles within the respondent as his work had been so varied over the years; his role was too broad to be made redundant.

Cross-Examination

At the time the claimant was made redundant he was responsible for liaising with the sales team, the computer networks, training, designing and queries from the staff. The claimant was never able to exert his supervisory role over BH as he was gradually 'cut-out.' The claimant thinks it would have been more sensible to make him Managing Director instead of CD. The claimant thinks the Financial Controller (BH) should have been made redundant instead of him in accordance with a 'last in first out' policy even though he is not an accountant he would be capable of filling the position. The claimant turned down the truss designer position offered due to the salary decrease and transport problems, this was not a suitable alternative. The claimant accepts that he has not been replaced and that the only management left in the respondent are the two owners and their family.

Determination

The Tribunal finds that there was a Redundancy situation in the respondent due to an overwhelming downturn in the business. The amendment of section 7 4(a) of the Principal Act states that an employee who is dismissed by reason of Redundancy may be so dismissed where a family member of the owners is retained.

"(4a) In ascertaining, for the purposes of subsection (2) (c), whether an employer has decided to carry on a business with fewer or no employees, account shall not be taken of the following members of the employer's family—

father, mother, stepfather, stepmother, son, daughter, adopted child, grandson, granddaughter, stepson, stepdaughter, brother, sister, halfbrother, halfsister."

The major reason for the dismissal was the need for the respondent to reduce its overheads; while the claimant had given valuable and long service to the respondent there was a genuine reason for dismissing the claimant by way of Redundancy. The Tribunal further take into account the claimant's position has not been filled and indeed the company, which had eighty people employed, is now down to thirteen staff. This was a fair selection for redundancy and accordingly the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)