

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
WT40/2009
UD107/2009

-claimant

Against

EMPLOYER

- respondent

under

ORGANISATION OF WORKING TIME ACT, 1997 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr L. Ó Catháin

Members: Mr D. Hegarty
Mr D. Mcevoy

heard this claim at Cork on 2nd February 2010

Representation:

Claimant: Mr David Gaffney, Coakley Moloney, Solicitors, 49 South Mall, Cork

Respondent: Mr. Jim Reaney, Ibec, Knockrea House, Douglas Road, Cork

The claim under the Organisation of Working Time Act, 1997 was withdrawn at the outset of the hearing.

The determination of the Tribunal was as follows:-

Respondent's Case

The Tribunal heard evidence from the CEO (FH) of the respondent company, which started approximately 15 years ago and developed into a home-wares operation. The company was developing nicely until 2008 when the downturn in the economy affected the turnover. In April 2008 shop managers were advised to cut back on hours of work and staff percentages. In December a warehouse in Dublin was closed with the loss of 8/9 staff. The warehousing operations were brought back to Blarney.

Other cutbacks were then looked at. At the time there were two junior buyers in the company, one of which was the claimant. The claimant had been employed as a junior buyer with the company since 2007. The other junior buyer (SS) had been employed in retail with the company since 2003

and as a junior buyer since February 2008. FH took professional advice on the situation and was told to apply the “last in, first out” method of selection. Therefore, the claimant was chosen for redundancy.

At the time of the redundancy there was a trainee manager position available in Dublin but FH said that the claimant was not made aware of this, nor was he considered for this, because he was a buyer and the position was in retail. On receipt of correspondence from the claimant’s solicitor the claimant was invited to apply for the available position. However, the claimant did not apply for the position.

After the claimant’s dismissal there was a lot of movement in the buying department. The Chief Operations Officer and Senior Buyer (HOD) went on maternity leave and FH took over her role. She accompanied the SS to 2 or 3 trade shows and then SS went on sick leave for approximately 5 weeks. In the meantime the Assistant Chief Operations Officer and Senior Administrator (POC) hurt her back and went on sick leave. When SS returned from sick leave she decided that the position of buyer was too onerous for her. She was put back into a retail position.

By April 2009, FH was doing all the buying and the two girls were doing the follow up. In May, the Administration Assistant (LK) was commencing maternity leave and her job was advertised to find a replacement. When interviewing for this temporary position, FH decided to take on two assistants because the POC was still absent. She recruited EOC and LM. LM did not work out and finished with the company after a month or two. Then there was HOD, EOC and AP. There were three positions where there had previously been six.

In 2009 it was decided that the company would no longer sell heavy furniture because it was costing too much to provide home deliveries. This was the type of furniture that the claimant was responsible for buying.

Under cross examination, FH confirmed that the direction to make the claimant redundant came from herself. She explained to HOD that unfortunately a buyer had to be made redundant. She sat with HOD and discussed the cutbacks that had to be made and HOD implemented them. HOD explained to FH that the claimant was returning home to France for the Christmas holidays and after some debate they decided it would be fairer to inform the claimant of the redundancy prior to his holidays and the buying season.

FH explained that although HOD was commencing maternity leave in February 2009, neither the claimant nor SS could take over her position because she was a senior buyer.

During direct evidence HOD said she became aware that redundancies were required in early – mid December 2008. After discussions with FH and having sought professional advice it was decided that the “last in, first out” mechanism would apply. HOD met with the claimant and explained that the company was in a difficult position and a buyer’s position had to be made redundant. The claimant was told that because he was the most recent employee (between him & SS) that he was being made redundant.

HOD did not consider the claimant for the available trainee manager position because his strengths were not in retail management and he never expressed an interest in retail. HOD wrote to the claimant’s solicitor on 16th January 2009 inviting the claimant to apply for the available position. He did not apply for the position. HOD went on maternity leave in early February 2009 and that was the end of her involvement.

Under cross examination HOD explained that an email re “Buyers and Hours” sent on 19 November 2008 was in relation to the role of buyers and how their hours vary as part of that role. This email was sent to both buyers to ensure commitment from her team, she wanted to leave a good team behind when going on maternity leave. HOD said that the claimant’s contract stated his hours of work as “Your hours of work will be in accordance with business requirements”.

Claimant’s Case

During direct evidence the claimant said his employment with the company commenced in May 2007. He was employed as a buyer and this involved choosing goods, deciding based on trends that they’re going to be the best products to sell in store. The buyer also goes to trade shows, meets suppliers and does follow up work. One or two days a week the claimant would be required to go to the stores. The claimant said he had no problem with merchandising and had knowledge of retail. He had been called to the shop in Killarney a few times to run the shop if the lady there was sick. For a while this was happening every Thursday.

The claimant told the Tribunal that he had a degree in business which, involved internships and training periods every year. One year he did an internship for approximately five months as a floor manager in a shop in Spain. This was retail and was on his CV.

The claimant said that his hours of work started off as normal and in the last six months of his employment he had to work on a lot of projects, eg: catalogues. One week he worked from 8am until 2pm every day to do a catalogue. He told HOD that they (buyers) should be in the office enough to do the work properly or there would be consequences. He highlighted that they were doing everything in a hurry. Her reaction was not good and she told him “we are part of the business and you do what is expected of the business.”

A short time after this he was called to a meeting with HOD and told that due to the downturn in the business he was being made redundant. He was shocked because he had already been given his flight details for the trade shows in January. He emailed HOD on 19th December 2008, expressing his shock at the decision and saying that he did not understand how he was chosen. He received a response to this on 22nd December 2008 explaining that, “due to the downturn in business and the bleak outlook for the year ahead I was left with no option”. The email went on to say “could no longer afford 2 junior buyers” and “will prepare a reference for you”.

The claimant said there were no discussions or warnings about his redundancy. He knew about the warehouse redundancies but was not aware of any in head office.

After his dismissal the claimant went online to look for a job and he saw the trainee manager position advertised for the company’s Malahide store. He was shocked to see the position advertised because he had worked in the store and knew all of the staff in the store. He did not apply for the job because he was not told about it. He was disappointed and felt that he was not welcome with the company anymore. He would have moved to Dublin for the position.

Under cross examination the claimant said that he enjoyed the work of shop manager but did not express an interest in it because he never had a review. He said that when he was told he was being made redundant it was an affirmation, and for that reason, he did not tell HOD that he would or could do other work. The claimant said that he did not apply for the position in the Malahide store because his relationship with HOD was bitter and he felt he was not welcome in the company. The

claimant accepted that he could have applied for the position but didn't.

The claimant felt the lack of transparency showed that he was unfairly selected for redundancy and "the last in, first out" method was not explained to him.

Determination

Having considered all the evidence and submissions made by the representatives carefully, the Tribunal concluded that the respondents failed in their statutory duty in their treatment of the claimant. Accordingly, the Tribunal awards the sum of €5,500.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

