

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM OF:**

EMPLOYEE

- claimant

**CASE NO.**

RP1919/09

UD1719/09

**Against**

EMPLOYER

- respondent

**under****REDUNDANCY PAYMENTS ACTS, 1967 TO 2007  
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr M. Noone  
Ms M. Finnerty

heard this claim at Dublin on 21st June 2010.

**Representation:**

Claimant: Mr Raphael Gilmore, Gilmore, Solicitors, 22 Bridge Street,  
Ringsend, Dublin 4

**Respondent:** In person

The determination of the Tribunal was as follows:-

The claim under the Redundancy Payments Acts, 1967 to 2007 was withdrawn at the outset of the hearing.

**Claimant's Case:**

The claimant commenced employment in March 1997. He worked as a signage installer.

He had a very good relationship with management and staff within the company until approximately eight months prior to the termination of his employment. He suffered bullying within the company. Several incidents had occurred which undermined him. In August 2008 while working on a job with A, A said he was leaving early and that he had received permission from Director D. D had never mentioned this to the claimant in advance. The claimant told A to stay and finish the job. A took umbrage with this and he and employee R would not talk to him after that. The claimant spoke to D the following Monday and D said he would see what he could

do. The claimant began to feel alienated within the company.

In the middle of the year the claimant's desk and PC were moved when he was out of the office. He felt undermined.

On a particular day in September 2008 while working at his bench he was called away to another job and was unable to clean up. Director E came to him a few days later and asked had he been on a protest and that he had left the bench dirty. The claimant explained what had happened. He was angry with E. The claimant had been health and safety conscious during his tenure and had tried to implement a health and safety policy but no policy existed.

E on another occasion asked the claimant if he was interested in attending a course entitled DISC with a life coach. The results of the course suggested the claimant had a potential for management whereas E did not. The claimant felt E turned against him after that.

On 23<sup>rd</sup> April 2009 E and Director AOB asked to see him in the canteen. They informed him that he was going to be made redundant. The claimant enquired if all staff were being made redundant and was told five others were. R was being kept on in the company. The claimant asked if there was any way he could keep his job and was willing to take a pay cut. E & AOB said their minds were made up and that his job was gone and it was not up for discussion. The claimant was in shock. He asked if he had to work out his notice. He had not. He was told to leave that day. All staff being made redundant were allowed to work out their notice.

Since the termination of his employment the claimant has been in receipt of the job seekers allowance. He has been unsuccessful in securing new work.

### **Respondent's Case:**

The respondent is a family run business. Early in 2009 sales were drastically affected by the recession. Turnover fell in January and February 2009, which were normally, busy months. Staff were informed of the situation in early February and nine production staff were put on a three-day week. Short time continued for ten weeks. Towards the end of April 2009 the company decided that in order to survive it was necessary to end the short working week and make some employees redundant. The company had to be restructured. Six staff were made redundant, the claimant being one of them. It was a very difficult decision. The claimant had been technically expert at installing large-scale signs and structures and this work had come to a complete stop at the end of 2008. The last of the work was completed during the short period. The claimant's position had become redundant.

Employee R who remained working in the company had a different skillset to the claimant. R's skillset was more relevant to the restructured operating work remaining. R had also been trained in running the production management system.

Following the incident with A in August 2008 as far as the respondent was concerned, it was assumed everything was ok and that no follow up was requested by the claimant. The DISC course wasn't an issue. The claimant was just asked to clean up the bench when it was noticed it was unclean. The claimant had been asked if he was interested in becoming a sub contractor and that he could earn more money.

The claimant's desk was moved in the middle of 2008 to allow better access in the area. The respondent had no animosity towards the claimant. He contended that the redundancy process could possibly have been handled better. The claimant had not been asked to work out his notice as the respondent contended that claimant could avail of the time to seek alternative work. It was cheaper for the respondent to retain employee R as his salary was in the region of 50% lower than that of the claimant and R had learned the production management software system.

**Determination:**

The Tribunal carefully considered the evidence adduced at the hearing. The Tribunal is satisfied that a genuine redundancy situation existed. Due to a downturn in the company's business the company had to be restructured. Clearly there was a lack of procedures in the company and the claimant had not been notified in advance of being made redundant. The claimant's position has not been filled since. The Tribunal notes that while the respondent did not deal with the issue in a very satisfactory or sensitive manner, nonetheless the selection for redundancy was not unfair. The claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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