

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
EMPLOYEE

CASE NO.  
UD1853/2009,RP2080/2009

against

EMPLOYER

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr M. Gilvarry

Members: Mr. D. Morrison  
Mr M. McGarry

heard this claim at Castlebar on 20th May 2010

### **Representation:**

Claimant : Ms Áine Boyle B L instructed by  
Douglas Kelly & Son, Solicitors, Swinford, Co Mayo

Respondent : Mr David McCarroll, RDJ Glynn, Solicitors, Aengus House,  
Long Walk, Galway

The appeal under the Redundancy Payments Acts, 1967 to 2007 was withdrawn at the outset of this hearing.

The determination of the Tribunal was as follows:

### **Respondent's Case**

This company commenced trading in Galway in 1971 and established itself in the wholesale and later retail sectors of electrical supplies and service. In preparing to open a retail branch in Castlebar, county Mayo one of the joint managing directors recruited the claimant in 1996 as a sales representative. When the Castlebar premises were physically opened for retail business the respondent appointed the claimant as its branch manager in May 1999. This branch differed from the larger Galway premises in that its main customer base were predominantly walk-in customers and small-scale business operations. The Galway branch was more industrial oriented and had bigger end-user customers. The joint-managing directors who were brothers gave evidence to the Tribunal

By 2008 the respondent was experiencing a noticeable decrease in its turnover and

business transactions. The company submitted sales figures showing that change in fortune. By early 2009 staff including the claimant accepted a ten percent reduction in their gross wages. In addition changes made to pension arrangements contributed to cost cutting should have happened earlier according to the first witness. A meeting of the respondent's directors, which included the two witnesses, was held in Galway on 2 April and addressed the deteriorating state of affairs facing the company. The first witness stated that the respondent had to do something fast concerning that scenario and that certain proposals were discussed. Under the heading Castlebar Management the notes of that meeting read in part: *The Castlebar branch is to be restructured and re-organised. The role of Management of the branch shall be subsumed by management in Galway. The position of Manager shall be made redundant.* The witness insisted that no decision had been made at that time to make the claimant redundant.

Later that day the witness drove to Castlebar and both read and presented the claimant with a letter related to that meeting. That letter informed the claimant that the Castlebar branch was being restructured and re-organised and as a consequence there was a proposal to subsume his position by appointing his brother, the other joint-managing director into that role. That letter invited the claimant to meet and consult with the respondent regarding this development "in relation to the proposed redundancy and we are keen to obtain your input before any final decision is made". Following the delivery of that letter the witness departed the premises.

The witness met the claimant again on 7 April and produced notes of that encounter to the Tribunal. During that brief discussion the witness said that the company was re-inventing itself and that as part of that change the respondent needed to recruit a specialist to the Castlebar branch. The witness speculated that had the claimant suggested solutions to the proposed redundancy then perhaps he would not subsequently have been made redundant. When this witness again met the claimant on 14 April he gave notice to the claimant that he was being made redundant with effect from 26 May 2009.

By that time four people were working at the Castlebar branch. These included the brother of the witness, a newly recruited electrical technical, a driver, and a sales assistant. The witness accepted that the claimant could perform the role of the sales assistant. However, the claimant was not encouraged to apply for the new position of electrical technical as he did not have the qualifications for that job. This process was based on the premise that it was a restructuring exercise as distinct from a cost-cutting operation.

A second joint managing director who took over as branch manager at Castlebar emphasised the necessity of hiring a specialised person in order to achieve the desired restructuring. Only one person applied for that post which was advertised in a regional newspaper. The applicant who the witness was acquainted with was appointed to that position. However, the witness neither approached nor canvassed him for the job. While the witness conceded that no alternatives were offered to the claimant he also stated that the claimant did not offer any suggestions to the presented proposals.

### **Claimant's Case**

From May 1999 to the spring of 2009 the claimant was the branch manager of the Castlebar branch where he undertook "the whole range of jobs". He was shocked at reading the contents of a letter presented to him on 2 April 2009. His reading of that letter indicated to him that a decision to make him redundant had been made. The witness told the Tribunal that the contents of that letter contained a proposal as distinct from a decision. While his views were sought at a meeting on 7

April the claimant felt that no matter what he said the decision was made. It was a case of “nice knowing you and goodbye”. No alternative positions were offered to him and he was told that he was not suitable for the newly advertised job. However, the claimant accepted he was not qualified for that position. He would have been prepared to consider other positions in the branch, even at a reduced rate of pay.

### **Determination**

The respondent’s case in justifying the redundancy and dismissal of the claimant, and its actions in carrying out the process was less than best practise. The Tribunal was unimpressed with both the consultation process and the contents of the notes on that process. It was not surprising that the claimant felt a decision had already been made to make him redundant. Parts of the submitted notes seem to support this. The consultative process was too rushed and insensitive to a dedicated long-term employee. The greater onus is on the employer to offer alternatives rather than expect the employee to propose them. No real effort regarding alternatives was presented to the claimant. Nonetheless it is also clear that the claimant did not actively participate in the process, and did not present to the respondent at the time the alternative he gave to the Tribunal in his evidence.

The Tribunal accepts that the respondent had to address its financial and trading situation. In that context a restructuring programme was perfectly reasonable. That restructuring led to the redundancy of the claimant and the subsuming of his position. There was some consultation on that issue.

Having carefully considered this case the Tribunal finds on balance that while the respondent did not follow best practise, the claimant’s position was genuinely made redundant. Accordingly, his claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

