

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD993/2009, RP1132/2009
MN1010/2009

against

EMPLOYER

Under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. Gilvarry

Members: Mr T. Gill
Mr O. Nulty

heard this claim at Sligo on 25th February 2010

Representation:

Claimant : Mr Barry Creed, McDermott Creed & Martyn, Solicitors,
Constitutional Buildings, Stephen Street, Sligo

Respondent : XXXX

The determination of the Tribunal was as follows:

The appeal under the Redundancy Payments Acts, 1967 to 2007 was withdrawn at the outset of this hearing.

Respondent's Case

The respondent is a modest sized motor parts company operating in the retail sector. It has up to nine branches throughout the State and employs in excess of seventy people. By the beginning of 2008 it had suffered financial difficulties to the extent that it started to let staff go. By the end of that year those redundancies had affected many of its administrators in several of its branches. The claimant was employed in such a role in their Sligo branch. A general manager with the respondent stated that when he formally told the claimant of his redundancy on 29 December that he encountered no objection from him.

This witness in the presence of a store manager from another branch called to the respondent's place of work that day and delivered that news to the claimant. This manager said the function of

the store manager was to act as an independent witness to this development. He was anxious to carry out that task in a fair, proper and compassionate manner. In addition to making the claimant redundant that day the witness also said that the required statutory notice payment was discharged to him. The claimant had an opportunity to read the redundancy documentation and having done so he signed the statutory form whereby a cheque was handed to him as payment for that redundancy. He denied any coercion was used and added that he did not have a difficult relationship with the claimant.

According to the witness he did not want to make the claimant redundant and told him so but that in the interests of the viability and profitability of the respondent he had no option but to make that decision. There were no overall company redundancy criteria but the role of administrators could be absorbed and rationalised into the respondent to allow it to make those positions redundant. No alternative position was offered to the claimant, as there were no positions available in which he could undertake. While acknowledging that the claimant performed other work tasks such as warehousing and deliveries, “ninety-nine percent” of his time was spent on administration.

There was a meeting of these two gentlemen in mid April 2008 when the prospect of moving to a new premises was discussed. However, no definite plans were made on that move. The witness denied that was a conflict between them on that occasion and that he used offensive language towards the claimant. He said that the claimant was an impeccable employee but that by the end of 2008 the respondent had no further role for him.

The store manager from another branch said that she had not met the claimant prior to their meeting in Sligo on 29 December. While she was present for the duration of this discussion she did not hear her colleague threaten the claimant about his redundancy payment. However, he did appear surprised at the announcement of his imminent redundancy, as he had not expected it.

Claimant’s Case

The claimant commenced employment with the respondent at its Sligo branch in October 2001. Attending to the administrative duties was his main function but he “did more or less every job” except sales. In fact he never refused to do any job asked of him by the respondent. Restructuring within the company took place in 2007 and that involved the claimant performing a stocktaking role. The claimant described an incident with the general manager on 15 April 2008 where that manager acted offensively towards him in manner, tone and language. He was so shocked by that encounter that he reported it immediately to his store manager. At that time the claimant knew there would be repercussions related to that incident and suggested that his subsequent redundancy was a direct result of that encounter. He alleged that the general manager told him that he would put him (the claimant) where there was plenty of ventilation.

Prior to 29 December 2008 the claimant had had no discussions with the respondent about redundancy. That day the general manager and an unidentified female arrived at the Sligo branch and within a short time he was informed of his imminent dismissal. He needed time to consider this development when the general manager told him that if he did not sign the redundancy form then and there he would not get his redundancy cheque. The claimant felt he was left with no option but to sign. The claimant was in a state of shock at the way he was treated. He was then told to take his belongings and vacate the premises.

The store manager at Sligo described the claimant as a good employee who mainly did administrative tasks but also undertook stock room work. This witness confirmed that the claimant told him of an altercation he had with the general manager on 15 April 2008. The witness was not informed by the respondent prior to 29 December that a decision was made to make the claimant redundant. However he did not find that approach strange.

Determination

In the current economic climate there have been a large number of job losses by way of redundancy. In cases of redundancy best practise is to carry out a genuine consultation process prior to reaching a decision as to redundancy. While in some cases there may be no viable alternative to the making of one or more jobs redundant, whatever consultation process is carried out, the employer who fails to carry out a consultation process risks being found in breach of the Unfair Dismissals Acts as such a lack of procedure may lead to the conclusion that an unfair selection for redundancy had taken place. In this case there was no consultation good bad or indifferent and despite the respondent's protestations the way it dealt with the claimant was anything but compassionate. This long-standing employee deserved better treatment, and his redundancy was dealt with in a formalistic and insensitive manner.

Despite the above the Tribunal accepts the respondent's evidence which cogently showed that the claimant's redundancy was genuine, and that there was no unfair selection for redundancy. Accordingly, the claim under the Unfair Dismissals Acts, 1967 to 2007 falls.

The Tribunal is satisfied that the respondent discharged its obligations under the Minimum Notice and Terms of Employment Acts, 1973 to 2005. The appeal under those Acts, therefore falls.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

