

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE

UD729/2009

against  
EMPLOYER

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly B.L.

Members: Mr. T. O'Sullivan  
Ms. E. Brezina

heard this claim at Dublin on 19th February 2010 and 7th May 2010

Representation:

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Claimant:

Bowman McCabe, Solicitors, 5/6 The Mall, Lucan, Co Dublin

Respondent:

P.D. Gardiner & Co, Solicitors, 15/17 South Leinster Street, Dublin 2

The determination of the Tribunal was as follows:-

#### **Respondent's case**

The company suffered a severe downturn in sales during 2008 & 2009 and had no alternative but to reduce the overall number of employees. Previously there had been 121 employees and now there were only 70.

The redundancies were made on a departmental basis and the manager of each department was responsibly for drawing up a list on the basis of last in first out. The claimant was the only person doing his particular job and his manager had identified that job as being expendable. Therefore the claimant was made redundant. There were elements of the claimant's job that had been subsumed by others. One job carried out by the claimant was being considered for out sourcing. This job was carried out on a once yearly basis and took about two weeks to complete but has not been done since the claimant left.

Shortly before being let go the claimant had requested a pay rise and this was the reason why the respondent did not consider offering him alternative employment at a significantly lower rate of pay

and without privileges such as a company car or mobile phone. It was also pointed out by the respondent that providing alternative employment for the claimant would have meant making someone else redundant from that position.

After all the evidence and cross examination of the respondent had been completed the claimant took the stand and made allegations that had not been put to the respondent. Therefore the Tribunal allowed witnesses for the respondent to subsequently return to the stand and address these allegations.

These allegations were that:

1. that during a meeting held at the request of the claimant in respect of unpaid expenses director of the respondent had called the claimant a f---ing moron and told him “he had him beat” and that he was getting no expenses. The director in question denied that such a meeting ever took place or that he ever used such language to the claimant.
2. That the claimant had been told by his manager to move to an office situated in a porta cabin. This office did not have heating or opening windows and was filthy. It also had only one exit and a flickering light. Photographs of this office were handed to the Tribunal. The manager in question stated that the claimant was not moved to that office and submitted photographs of the office in which he said the claimant worked.
3. That two people had been employed subsequent to the claimant being let go and that these people were carrying out what had been his functions. A witness for the respondent briefly outlined the work being done by these two employees and stated that neither were carrying out the claimant’s former duties.

### **Claimant’s case**

The claimant stated outlined what was involved in his job as after sales manager and was adamant that this job was not redundant and that someone else was now doing that work. Despite a severe downturn in sales the claimant was still busy in his work up to the time he was re-assigned to another section. The reason for his being transferred was that a build up had accrued and he was asked to “sort it out”. This re-assignment had come about during a meeting in November 2008 between the claimant and a director of the respondent. This meeting had been requested by the claimant in order to discuss expenses due to him but not yet paid. These expenses were still not paid at the time of the hearing. The claimant was told that when the “mess was sorted” to come back and discuss his expenses. However when the back log was cleared the claimant returned to the director and was then told that there was a recession and nobody was getting paid expenses.

Soon after clearing the back log the claimant was made redundant. Sometime between the meeting in November 2008 and being made redundant his mobile phone and his company jeep were withdrawn from him. However both were returned to him and he had the use of them until the end of his employment.

The claimant felt that he was being “given the push”. This was due in part to the aforementioned but also because of being told to move office to a porta cabin, being called a f---king Moron and being told “I have you beat” by a director of the respondent. The claimant alleged that he was unfairly selected for redundancy and therefore unfairly dismissed. Had alternative employment been offered to him, even at a lesser rate of pay, the claimant stated he would have taken it.

**Determination**

The Tribunal was unhappy with the standard of evidence given by both sides. However the Tribunal accepts that a genuine redundancy situation existed within the company and that the claimant was fairly selected for redundancy. Therefore the claim under the Unfair Dismissals Acts, 1977 to 2007 must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

