

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE -**Claimant**

CASE NO.
UD528/2009
RP550/2009

against
EMPLOYER -**Respondent**

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K. T. O'Mahony B.L.

Members: Mr. D. Hegarty
Ms. P. Doyle

heard this claim at Cork on 3rd March 2010

Representation:

Claimant: Mr. Francis Kelleher, Francis C. Kelleher & Co., Solicitors, 1 Pearse Square,
Cobh, Co. Cork

Respondent: Mr. Paul O'Donoghue, Paul O'Donoghue & Co., Solicitors, Oldcourt, Riverstown,
Glanmire, Co. Cork

The determination of the Tribunal was as follows:

The claimant worked for the respondent company as a nightshift warehouse supervisor from 3 July 2006 to 2 February 2009, loading and unloading trucks. Two other employees were also employed in this section but the claimant was the most recently employed of the three.

The respondent company had a difficult trading year in 2008 and the first five months of the new financial year were even worse. The company got less business and it had to respond to existing clients' requests for a reduction in its charges, as it would otherwise lose the clients. The accountant went through the business plan and in late January 2009 he advised the Managing Director that serious changes had to be made or the company would have to cease trading. At that time the company had thirty-two employees.

Survival of the company depended on cutting costs. The three main areas of expense were salaries, fuel and rent. A number of options were considered including pay cuts, redundancies and increasing turnover by 20%. The company had many long-serving employees and the Managing Director wanted to avoid redundancies if at all possible.

On the advice of the accountant the Managing Director held a meeting with all of the employees on Saturday, 31 January 2009 and asked them to accept a 16% pay cut with immediate effect as the company was experiencing financial difficulties. The possibility of redundancies was not discussed at this meeting. The Managing Director asked for questions from the floor but while the staff were unhappy about a pay cut, no comments or disagreements were expressed.

On Monday, 2 February 2009 the claimant telephoned the Managing Director and expressed his misgivings about the pay cut. The Managing Director's evidence of the telephone call was that the claimant told him that he was not entitled to cut his salary. The Managing Director explained that he had no other choice but to ask staff to take a pay cut. The claimant told the Managing Director that he could not touch his salary until they had a meeting in two weeks time. The Managing Director told the claimant that he could not leave his salary uncut when all of the other employees were taking the pay cut with immediate effect.

Later the same day, the Managing Director received a telephone call from the accountant who informed him that further cuts had to be made to try and keep the company trading. The Managing Director informed the accountant that a driver would be leaving that week and would not be replaced. They discussed the possibility of redundancies and the Managing Director was satisfied that he could manage with fewer employees on the nightshift. He selected the claimant's position for redundancy using the process of last in first out.

He telephoned the claimant some time later on the 2 February 2009 and informed him that as the company's situation had deteriorated he was being made redundant. He informed the claimant that he would pay him his notice and that he need not come to work if he did not so wish. The claimant was the only person selected for redundancy. The claimant was angry.

The claimant was not replaced at the time he was made redundant but another employee who worked in the section, who had been working a three-day week at his own request had his hours increased to full-time. However, in late 2009 the company received a new contract and due to the volume of business from the contract a warehouse operative was employed.

The respondent's accountant confirmed that he had advised the Managing Director to implement pay cuts. The rent paid for the premises was also re-negotiated and a deferral of repayments was requested from the bank. The Managing Director was reluctant to make redundancies. The required reduction in staff was achieved through the claimant's redundancy and through the departure of other staff that were not replaced.

It was the claimant's evidence that at the meeting on the 31 January 2009 he enquired if further pay cuts were to be expected and the Managing Director acknowledged it was a possibility. When he telephoned the Managing Director on Monday, 2 February 2009 he requested that his pay remain intact until they had an opportunity to meet and he suggested meeting on the 4 February 2009. The Managing Director told the claimant that the pay cut was not for discussion. The claimant requested that his wages remain intact until he had signed the agreement. The claimant wanted to discuss the possibility of working longer hours or doing some deliveries in his own van for the company. Redundancies had not been discussed at the meeting on the 31 March 2009. The number of lorries that the claimant unloaded and reloaded had not reduced at the time that the Managing Director made him redundant. He was the only person to question the pay cut and he was the only employee who was made redundant.

Determination:

The Tribunal fully accepts that the respondent was confronted with a serious financial situation. However, purporting to make the claimant redundant within hours of his request for a meeting to discuss the pay cut, which was the subject of a meeting two days earlier, and without acceding to the claimant's request for a meeting prior to the decision to terminate the claimant's employment renders the dismissal unfair.

The claim under the Unfair Dismissals Acts 1977 to 2007 succeeds. The Tribunal considers that compensation in the sum of €17,750.00 is just and equitable in this case.

The appeal under the Redundancy Payments Acts 1977 to 2007 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)