

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

CASE NO.
UD589/2009

- claimant

against
EMPLOYER

- respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

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

Members: Ms. M. Sweeney
Ms. H. Kelleher

heard this claim at Cork on 2nd March 2010 and 30th April 2010

Representation:

Claimant: J.F. Goold & Company, Solicitors, Macroom, Co Cork

Respondent: P.J. O'Driscoll & Sons, Solicitors, 73 South Mall, Cork

The determination of the Tribunal was as follows:

Summary of the Evidence

The Chief Executive gave evidence. The respondent manufactures boilers. The claimant, who had been living in Ireland since 1976, commenced employment with the respondent in July 1998. The claimant and another employee (AE) worked as spray painters. By 2001, the respondent had 200 employees. However, at the time of the hearing before the Tribunal, the number of employees had reduced to 113 in Ireland and 10 in the UK. This reduction was due to competition from abroad and a large fall in demand for the respondent's product. The respondent began to invest in automated efficiencies. This area was explored in 2000 onwards and a plan was put into place commencing from 2007.

By Autumn 2008 the respondent was in the process of automating a number of processes. The main assembly line was automated from 2007 and the next step was to automate the spray painting. A robotic spray booth was installed that used a water based paint which was cheaper than the solvent based paint which AE and the claimant used in the course of their duties. The robotic spray booth could carry out the work of 1.5 spray painters, with the result that the respondent had to make either AE or the claimant redundant. AE had longer service than the claimant and when asked he indicated that he did not wish to be made redundant. The claimant was selected for redundancy solely because he had shorter service than AE.

The spray painting function became fully automatic by November 2008. On 3rd November 2008. The Production Manager spoke to the claimant and put him on notice that his position with the respondent would be made redundant and that he would be moved to another assembly line to work out his notice with the respondent. On the 28th November 2008 the claimant was given formal notice of his redundancy. The claimant was moved to another assembly line to work out his notice. This assembly line was also due for cutbacks and for this reason the work offered to the claimant on that assembly line was short-term. The claimant's employment ended on 9th January 2009.

AE's continuing role in the spray-painting area was painting the boilers that were too large to go through the line and this involved 2-4 hours work per day. For the remainder of the day he did other work. The respondent found both the claimant and AE to be excellent workers/spray painters. It was the claimant's evidence that while they worked well together AE was a "slow learner", took longer to carry out work and left him to carry out the difficult duties. The claimant accepted that he had shorter service than AE.

It was the claimant's case that the respondent moved two people from the assembly line to work in the spray-painting section. The respondent agreed but explained that these two employees were moved to the testing box area and were responsible for quality control of the product. One of these was Mr. M who had worked in quality control in another area of the factory and was transferred to the spray-painting area to inspect items as they emerged from the robotic spray booth. Furthermore, he has good communication skills and deals with suppliers if there are any issues. He commenced employment with the respondent a few weeks before the claimant started. Mr. P was the other employee who was transferred to the area but he was also responsible for quality control and he assisted with programming the robotic spray booth. Mr. P subsequently transferred to a position with another company in the group. Another person was employed to maintain the new machines for which he holds the relevant qualification. The claimant maintained that while on the assembly line he had carried out quality control on the products he was assembling.

For a number of years the respondent has been trying to develop a range cooker. It is out of the R&D stage. The respondent was hoping to begin production of this in the months around the time of the claimant's dismissal for redundancy. However, mass production of the cooker was delayed, as the product was not successfully finalised. The product has yet to reach the stage of mass production. The Production Manager informed the claimant that when this product goes into production he would contact him with a job offer in case he had not secured other work in the meantime. Currently, the respondent is producing one of these per month.

The Chief Executive told the Tribunal that business had improved to some degree in mid 2009 and by July/August of that year the respondent hoped to make a slight increase in production. An offer of work was first made to another employee who had been made redundant in June 2009 but he was not in a position to accept the work. By letter dated 16th September 2009, the respondent wrote to the claimant offering him 13 weeks work until the 18th December 2009, as there was a vacant position on the production line. The claimant was not in a position to accept the offer. The respondent subsequently employed three employees, as demand for the respondent's product was high in early 2010. However, it is uncertain how long their employment will continue. Sometimes there is movement of staff between the respondent and another company of which the respondent is a majority shareholder.

The Chief Executive accepted that it would have been fairer if the respondent had consulted with the claimant during 2007 when the automated processes were first planned, as it would have allowed the claimant the opportunity to retrain in another area. The respondent is usually successful in redeploying staff but at the relevant time demand for the product had dropped. Efforts to find the claimant work in the related company also failed. The claimant's evidence was that he had been aware that the respondent was installing a robot to carry out the spray painting. There had

been redundancies throughout the period October 2007 to May 2009. While cost was a factor in some redundancies it was not in the claimant's case. It was not a case of offering the claimant work at lower pay, the respondent had not a job for him in late 2008. The respondent's policy in redundancies is last in first out in the particular section.

Determination:

The Tribunal is satisfied that a redundancy situation existed in the spray-painting area. The policy of last in first out applied in relation to redundancies in the company. The other spray painter had longer service than the claimant but none the less the respondent offered that employee voluntary redundancy which he declined. The other workers, which the respondent brought into the painting line at the time, were not involved in spray painting and had different skills to the claimant. The respondent made efforts to find alternative employment for the claimant. For these reasons the Tribunal is satisfied that the claimant's selection for redundancy was not unfair. Accordingly, the claim under the Unfair Dismissals Acts 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)