

**EMPLOYMENT APPEALS TRIBUNAL**

**CLAIM OF:**

EMPLOYEE - claimant

**CASE NO.**

UD1248/09  
RP1422/09

**Against**

EMPLOYER - respondent

**under**

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr J. Horan  
Mr S. Mackell

heard this claim at Naas on 18th May 2010 and 22<sup>nd</sup> September 2010.

**Representation:**

Claimant: In person

Respondent: On 18<sup>th</sup> May 2010 by Mr. Andrew Smith, A & L Goodbody, Solicitors, IFSC North Wall Quay, Dublin 1  
On 22<sup>nd</sup> September 2010 by Mr. Alan Haugh, A & L Goodbody, Solicitors, IFSC North Wall Quay, Dublin 1

The determination of the Tribunal was as follows:-

**Respondent's Case:**

The respondent is a logistics and freight forwarding company. Its core business is freight. It has four sites throughout Ireland and had key customers such as company I located in Leixlip and company D. The respondent manages the site in Leixlip where the claimant was employed. A three-year contract was secured on that site. Employees work on a shift basis.

On 1 January 2009 the contract changed to a scope of work contract. Due to the recession there was a drop off in key customers. It lost key customer company D in January 2009. Thus there was a

reduction of 40% in freight forwarding business. Cost savings were required. An internal memo issued to all staff in January 2009. The respondent was forced to make redundancies across a number of sites including the site where the claimant worked. (Phase 1). The HR Director and local management conducted briefings on each affected site. At that time the senior management team took a 5% pay cut for 2009 and middle management took a 3% pay cut.

In Phase 2 a further announcement was made to staff in April 2009 and staff were informed that six redundancies were required on the site where the claimant worked. This caused upset and anxiety in the company. Again the HR Director and local management conducted briefings with employees.

Individuals were selected for redundancy using established criteria: (1) reliability, (2) attention to safety, (3) performance and (4) disciplinary record. Each has an appropriate weighting. Safety is on the agenda of every meeting and staff are well aware of the importance of safety in the workplace. Staff are regularly pulled up over lateness and absenteeism. The review mechanisms in place for staff working on the Leixlip site were rerun to end March 2009. The HR Director rechecked the reviews. Lates accrued by staff in the period of bad weather in early January 2009 were omitted from the review.

Four staff accepted an offer of voluntary redundancy which left two staff to be made redundant. The claimant and another received the lowest scoring and thus were chosen to be made redundant. The personal injuries claim lodged by the claimant had no bearing on the respondent's decision to make him redundant. While the claimant had been absent for a period of sick leave the respondent treated him very well and he received his full pay and shift premium during his sick leave absence.

Annual reviews are normally conducted early in the following year. Despite numerous reminders to the claimant to complete his section of the annual review his supervisor proceeded to complete the form. The review meeting was held on 21<sup>st</sup> April 2009. The claimant chose to appeal his appraisal on the afternoon of 22<sup>nd</sup> April 2009. As the claimant had been selected for redundancy and the HR Director was meeting him the next day to inform him of his redundancy, a decision was taken to discuss his appeal at the meeting on 23<sup>rd</sup> April 2009. At that meeting the HR Director explained to him that unfortunately he had been selected for redundancy. She showed him scoresheets. The HR Director explained his right of appeal. The claimant became very defensive and disputed the decision to make him redundant. He wanted to focus on his appraisal meeting. He felt that he was picked out. He told her that he had appealed his appraisal the previous evening. The claimant said he was very definitely appealing the decision. The HR Director expected that he would do so and as he left the room he said it was unlikely he would appeal informally but would do so to another forum. The claimant was not required to work out his month's notice. His redundancy payment was calculated on the pre pay cut salary.

The respondent's letter to the claimant dated 21<sup>st</sup> May 2009 enclosed the claimant's cheque in respect of redundancy. Two sessions of an outplacement consultant were made available to him. The claimant did not avail of these sessions.

### **Claimant's Case:**

The claimant commenced employment on 31<sup>st</sup> July 2003 and was employed as a warehouse operative. In March 2008 he suffered an injury at work and was absent for approximately four and half months. Following his return to work he was transferred to different duties. He

ought recoupment of his out of pocket expenses from the company but to no avail. He lodged a personalinjuries claim. He was moved to work in another building in January 2009. He encountered difficulties in his role and spoke to his manager. He felt victimised. He felt management's attitudetowards him changed after that. Following a memo from management indicating that redundancieswere required and because of management's actions towards him he felt they wanted him out andmight make him redundant.

The claimant contended that a new review mechanism was introduced in early 2009. No handouts were given on the workings of the system.

At his annual review meeting on 21st April 2009 with his supervisor he was painted as negative, demotivated and unprofessional and he was accused of not wanting to be in the company. He was scored fair in his review. The respondent operates operated a good catch scheme. This scheme was used to prevent injury in the workplace and had worked well in the company. There was an expectation on every employee to raise a good catch in every quarterly period. Under the safety heading he was told he had not raised enough good catches. He contended that the company had a five-minute grace period for clocking in. He felt the clocking system had been manipulated. He contended the whole process was flawed and open to manipulation on every level.

He disagreed with how things were done in the company and when he tried to recoup his out of pocket expenses he contended the company were out to get him. While he did not invoke the grievance procedures he approached management and emailed them of his concerns. While he knew six redundancies were to be announced in April 2009 he did not believe his job was in jeopardy.

The claimant appealed his appraisal on the afternoon of 22nd April 2009. When he was asked to attend a meeting with the HR Director the following day he believed this was to discuss his appeal. Instead he was notified of his redundancy. He was not told he could appeal his redundancy at that meeting nor at his exit interview.

Following his redundancy he applied for many jobs and completed a course in graphic design. He has not secured work since the termination of his employment.

### **Determination:**

The Tribunal has carefully considered all of the evidence given over a two-day period together with the documentation that was submitted.

Evidence was given that the respondent company was very closely regulated and scrutinized by company I who was by mid 2009 the respondent's only client. The respondent's business was affected not only by the recession but also by the loss of company D as a client in January 2009. Company D's business amounted to approximately 40% of their business. Evidence was adduced and was not contradicted that the respondent was instructed by their client to make budgetary cut backs, budgetary and to reduce the number of employees in 2009. With a view to reducing the number of personnel that would be made redundant various measures were adopted and are set out in detail in the document headed "Communications Message January, 2009". Unfortunately these measures were not sufficient to stave off redundancies. The respondent called meetings and informed staff that there would be redundancies and whilst they were involuntary they would consider anyone who came forward on a voluntary basis. The Tribunal is satisfied that the employees had full knowledge of the pending redundancies however it would have been desirable

to have more consultation with the employees to keep them informed of each stage of the process and in particular of the criteria that the respondent proposed to use for the selection process. The respondent gave evidence that they modified an existing document that had been previously used to select employees for shift work and used that to select persons for redundancy. Whilst the categories in the document (Reliability, Safety, Performance History, Current Performance and Discipline) were objective, some of the scoring within each category was subjectively applied.

The Tribunal also notes that the claimant was not notified in writing of his right to appeal the final decision to make him redundant however they are satisfied that he was notified verbally by the HR Director when he was informed that he had been selected for redundancy on 23<sup>rd</sup> April 2009. It is desirable that the notification of appeal be in writing but it not a fatal flaw. The Tribunal is satisfied that the claimant was aware of the right to appeal but choose to bring the matter to the Tribunal instead.

Having considered all of the evidence and documentation the Tribunal is satisfied that a genuine redundancy situation existed within the respondent company and that the claimant was not unfairly selected.

The claims under the Redundancy Payments Acts, 1967 to 2007 and the Unfair Dismissals Acts, 1977 to 2007 fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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