

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE *-claimant*

CASE NO.
UD1574/2009

Against

EMPLOYER *-respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr R. Maguire, B.L.

Members: Mr. A. O'Mara
Mr. P. Trehy

heard this claim at Dublin on 27th July 2010

Representation:

Claimant: Mr. John Murphy, SIPTU, Construction Branch, Liberty Hall, Dublin 1

Respondent: Ms. Jeni Browne, Management Consultant, 8 Ballywaltrim Cottages, Bray,
Co. Wicklow

Preliminary Point

The claim under the Unfair Dismissals Acts 1977 to 2007 was originally lodged with the Rights Commissioners Service but was subsequently objected to by the Respondent. The Tribunal accept jurisdiction as the claim to the Rights Commissioner Service was lodged within the specified time limit in the Act.

Respondent's Case

The respondent's business sharply declined due to the downturn in the economy. The respondent has two separate divisions; selling and installing air conditioning systems (contracts) and the service and maintenance of air conditioning systems.

The first witness (DOB) was a Director of the respondent. There was a 91% decrease in turnover and in order to rationalise the redundancies had to be made. The contracts department accounted for 90% of the respondent's total revenue. The business had quickly turned from contracts to service and maintenance where it was all skilled work. All the staff were informed of the situation in July 2008 and by way of a presentation in November 2008.

The claimant worked as part of the selling and installation of air conditioning systems division and was specifically employed as a ducting operative. The claimant was employed specifically for ducting work; the respondent had a number of hotels and small offices that require ducting in the installation of the air conditioning system. There were no other members of staff that could do his job. The respondent looked at the staff skill sets and the upcoming projects the respondent had on the books in order to make a decision on redundancies as per the employee handbook,

'selection will be on the basis of retaining key employees and the skills required to maintain an efficient operation...all else being equal, a policy of last-in, first-out will apply.'

The claimant was notified that he was being put on lay off in December for 6 weeks as there were no projects for the claimant to work on or the type of work he did. The respondent looked at alternatives for the claimant but all the other areas of work were skilled. It would have taken months to re-train the claimant and the respondent was operating on a week-to-week basis at that time. The Contracts Manager informed the claimant that he was being made redundant in January, as there was no ducting work available or coming up in the future. The claimant did not invoke the grievance procedure.

The contracts department was reduced from 33 to currently 2 employees. At the time of the claimant's redundancy 4 other members of staff were made redundant. Between October and January 14 people were made redundant from contracts. The remaining staff were qualified refrigeration engineers that could also work in the maintenance department. The respondent had restructured the organisation with 90% of staff in the service and maintenance department with the following skills: electricians, refrigeration operatives and control operatives. Of the 67 staff in July 2008, 17 were in the office, 40 in contracts and 10 in the service department. There were at the time of the hearing 12 staff in the respondent.

A table of contract department employees and their skill level was submitted to the Tribunal but had never been shown to the claimant. Another employee was also listed as a general operative (SK) but even though he had less service his skills set him apart from the claimant: he acted as a translator for the other Polish staff members and was also a delivery driver. SK was also proactive in requesting up-skilling and as a result was able to prepare a system in relation to – pressure testing, vacuum, adding gas, installing control wiring and drains. The claimant could not perform all of these tasks.

Another employee (HM) was a plumber who installed condensation drains in the air conditioning systems. The claimant could do a portion of this work under supervision. Both SK and HM were made redundant in May 2010.

The respondent discussed a pay cut with the claimant but he refused to take the reduction in pay.

The second witness for the respondent (VG) was at the time of the hearing the service supervisor but had been the contracts manager. The claimant did all the ducting work for VG and some supervised drain work. The claimant never demonstrated a desire to learn new skills. At the time of the hearing all of VG's staff either had a qualification in refrigeration or were electricians. On many occasions the claimant was asked to do other work but responded, 'I only get paid to do ducting.' The only maintenance on ducts was duct cleaning and separate companies were employed to do that.

There were 12 elements looked at in the Redundancy matrix. Each was weighted differently with plumbing and wiring receiving 30 points each, and the total added to 100 points. VG does not recall the points the claimant received only that he came last.

Claimant's Case

The claimant commenced work with the respondent in 2004 having previous experience as a ducter. The claimant's duties included: drains, units to be installed, preparing for pipers, putting uptrays, getting ready for refrigeration, fitting valve kits – doing all preparation work. The claimant's work was 15-20% ducting and the remainder general operative duties. The claimant trained SK who had no English when he started. HM started as a welder and piper with no English. The claimant does not believe that either of these employees had any additional skills than he had. The claimant does think SK *"did a bit more than me and got into it a bit more."* The claimant's attitude was *"If I wasn't down in Fás to do the job I shouldn't be near it."* The claimant never 'touched' gas. The claimant did some service and maintenance there is some general operative work in maintenance. The claimant never 'served his time' in sheet metal; he knew he was a general operative not a ducter. The claimant was rarely offered the opportunity to up-skill and did not avail of any additional training.

The claimant was asked to take a pay cut and work an extra 30 minutes for free each day around September/October. The claimant agreed to the pay cut but not to the extra 30 minutes on his working day. The claimant thinks he was selected because he refused to work the extra 30 minutes for free.

The claimant was handed a letter and informed by VG that he was being 'let go' on the 12th of December. The claimant was informed the respondent was only 'keeping qualified lads.' The claimant discovered there were other general operatives kept on after he was made redundant but he had already accepted his redundancy at that stage.

Determination

The Tribunal find that there was no adequate justification for the claimant's selection for redundancy. Therefore, the Tribunal finds that pursuant to s. 6(1) of the Unfair Dismissals Act 1977 as amended, the Respondent has not shown that there were substantial grounds justifying the dismissal. Accordingly the claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds and the Tribunal awards the claimant €28,000 as compensation.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)