

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD40/2009

against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

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

Members: Mr D. Hegarty
Mr J. McDonnell

heard this claim at Skibbereen on 21st September and 17th November 2009
and at Ballincollig, Cork on 18th, 22nd January and 29th January 2010

Representation:

Claimant : Mr. David J. Pearson, G.J. Moloney, Solicitors, City Quarter, and Lapp's Quay, Cork

Respondent : Ms. Eileen Hayes, P J O' Driscoll, Solicitors, 41 South Main Street, Bandon, Co Cork

The determination of the Tribunal was as follows:

Summary of Evidence

The respondent is a highly successful organisation that provides outsourced back-office and customer service functions to various clients. Those clients consist of institutions and companies from the private and public sectors including telecommunication companies, financial institutions, government departments and media bodies. The respondent experienced growth in its business over the years up to the point where it had 550 employees between its offices in Co. Cork and the office in central Poland.

The claimant had 30 years experience in information technology when he commenced employment with the respondent on 7th April 2004. His initial job title with the respondent was Systems Architecture Team Lead within the I.T. department reporting to the IT manager. His role carried several duties and responsibilities and inter alia involved providing IT security for clients. In early 2008 his job title was changed to Project Technology Lead. His performance appeared satisfactory as there had been no complaints or disciplinary issues with him.

In 2008 there was an ongoing restructuring in the respondent, driven by the type of services it was providing to its clients. Around the end of May 2008 the head of software development was promoted to the position of acting manager (AM) of the IT department. At CEO's request AM carried out a review of the IT department, with no previous experience or HR guidance, with a view to reducing its headcount by one. Arising from the review carried out over late May and June 2008 AM recommended that the claimant's position be made redundant. CEO agreed with the recommendation. The claimant worked in the hardware section of the IT department. At this time, about 50% of the claimant's work, which consisted of setting up the office in Poland, was coming to an end. The claimant was the only person AM identified as being at risk of being made redundant.

The claimant was called to a meeting on the morning of 24th June 2008 with AM and the HR manager (HRM) and informed that his position was to be made redundant. The record of the meeting states inter alia:

“(AM) advised (the claimant) that the IT Department had again been looked at, and further changes were necessary to ensure the department was providing the kind of service required to meet the continuing and changing demands of our various clients. In this regard areas currently being handled by (the claimant) are being subsumed into other areas of IT. This will entail the software specialists dealing with software issues, hardware specialists dealing with hardware issues, and (AM) herself would be taking charge of client related issues...”

HRM, who did not have a role in the review or the selection of the claimant for redundancy, was present at the meeting of 24th June to advise the claimant on the terms of the redundancy and discuss alternative positions available in the company. At the meeting both sides agreed that the position of VB Net Developer, which was available in the IT Department, was not suitable for the claimant. He was then advised to look up the respondent's intranet to see what available positions, outside the IT department, would interest him. The claimant was offered some time off to consider his position and contact recruitment agencies. Having checked the intranet the claimant subsequently expressed interest in the position of project manager, which had 2nd

July 2008 as the closing date for applications. HRM successfully made a case on the claimant's behalf to senior management to top up the redundancy package. At a meeting with HRM on 1st

July the claimant requested that his name be put forward for the position of project manager and he followed up with a written application. At that meeting he was advised that the formal notification of his redundancy was in the post. In the letter of even date the claimant was informed that his leaving date was set for 31st July 2008. Based on what he had been told, the claimant raised no objection to the redundancy at this stage.

AM, prior to her promotion in May 2008, had been the head of software development. AM had assessed the 16 employees who formed her software team (10) and hardware team (6), which latter included the claimant. She analysed their roles/work duties and time sheets. She neither read the claimant's curriculum vitae nor interviewed him. The time sheets were for the purpose of billing the client.

The claimant was subsequently interviewed for the position of project manager. He was not appointed to the position as the respondent needed someone with financial expertise and experience.

Ms. A (HT) who was on maternity leave from November 2007 to September 2008 met with CEO in

July 2008 and on resuming work in September 2008 commenced in the newly created position of Head of IT. On looking at the department she was very surprised that the respondent did not have systems security expertise to support company-wide business continuity. She felt there was need to address this as a priority. She determined that the respondent needed someone dedicated to systems security who would also put policies in place. She needed someone who had who had successfully covered systems security on a company-wide basis in recent times. HT did not have a security background herself.

On 2nd October 2008 a position was advertised through agencies and on the respondent's intranet recruiting a Senior Information Security Professional. Among the responsibilities attached to the post were those listed as follows:

- *Development of Information Security strategy and architecture*
- *Security monitoring to detect and address intrusions. Plan, execute and coordinate security reviews to identify and rectify security vulnerabilities*
- *Scoping and implementation of business continuity from BC planning and strategy, through to IT disaster recovery, business recovery & resumption, incident management and contingency planning across the group*
- *Knowledge of approaches, tools and techniques for recognising, anticipating and resolving organisational, operational or process problems*
- *Excellent knowledge of TCP/IP, LAN and WAN technologies*
- *Knowledge of VOIP and phone technologies*
- *Deep understanding of customer's technical and business needs*
- *Take an active role in designing, implementing and supporting the infrastructure to support new and existing clients*

The person specifications were listed as follows:

- *Held a senior IT related role in a multi-disciplined organisation*
- *Third level qualification in a (sic) IT related discipline*
- *Strong knowledge of IT Controls, Information assurance and information risk management/compliance strategy skills*
- *Must demonstrate deep knowledge of a variety of systems and technologies with an emphasis on information security awareness issues*
- *Hands-on attitude, self-motivated and enthusiastic individual comfortable with extensive interaction with users and client personnel*
- *Strong customer presentation and communication skills*

There is an excellent opportunity for the right candidate to further their skills and develop their career in a dynamic organisation.

The claimant applied for the above position on 14th October 2008 and stated he was applying for the position as it was the same as his previous position, which had been made redundant. Of the 12 applicants for the position 3 who held senior positions and had a background in security were short listed by AM and HT. Two of these dropped out before the interview stage. In an undated letter from the HR administrator the claimant was informed that he was not short-listed for the position. The successful candidate was allowed a large budget.

It was the claimant's position that he had performed all of the duties/responsibilities attached to the position as advertised on 2nd October 2008 and that as regards the personal requirements while he

did not have a 3rd level qualification in an IT related discipline he had 30 years experience in information technology including systems security experience when he joined the respondent in 2004. The claimant outlined the projects on which he had worked for the respondent's clients over his years in the employment. Such clients included a major state agency and a major insurance company as well as a number of major daily newspapers. The claimant had provided a systems security element as part of those projects. A major element of the claimant's work was setting up connectivity in a secure environment for the clients' applications. The claimant sourced the equipment and ensured solutions were implemented in a proper manner. In particular, he designed and implemented a business continuity plan for a major state agency and suggested to his manager that another business continuity plan, which he had prepared as part of a proposal for a potential client, should be used as a template for a company-wide business continuity plan. The claimant was an associate of the Business Continuity Institute. His manager had not given him instructions on the systems security element of the projects because the former did not have the knowledge or skills. The claimant, while responsible for systems security issues, occasionally called on external expertise.

The claimant had raised the issue of implementing a systems security policy and implementing internal systems security around laptops and memory sticks but was told that it was not a priority. He created a policy document for the log-on process for employees wishing to work from home. The claimant put forward a security proposal that would satisfy another client but his manager thought it was too expensive. The claimant alleged that an issue arose about outages with CEO and that shortly thereafter he was called to the meeting of 24th June. CEO had no recollection of any such issue arising.

It was the respondent's case that it was looking for a senior systems security professional who would implement systems security on a company-wide basis and the claimant did not have the skills required and as outlined in the advertisement. It was further the respondent's case that the tasks set out in the claimant's "Daily and Weekly Tasks" did not involve looking at security as a whole and that any experience he had in the field of security was client specific. It was HT's evidence that the claimant had never raised the issue of systems security with her and that he had only done a business continuity plan for one client. AM denied that she had received any instruction to make the claimant redundant.

Determination

AM, who had just been promoted and whose experience in the respondent was in the software section identified both the claimant's position in the hardware section for redundancy and the claimant as the employee to be made redundant. The Tribunal did not have sight of the analysis carried out by AM on the roles/work duties and on the time sheets of the employees in the IT department. Crucially, the decision in this case was made without interviewing the claimant or looking at his curriculum vitae. The Tribunal is satisfied that the decision to make the claimant redundant was made without knowing or taking into account his full range of skills.

Within weeks of the termination of the claimant's employment on grounds of redundancy the newly appointed head of IT found a major weakness in systems security in the company and sought to address it as a priority. The uncontroverted evidence of the claimant was that at the time of his redundancy he was the only employee in the company performing the systems security function.

Furthermore the Tribunal feels the company acted in haste, in particular it notes that although the

claimant had expressed interest in the position of project manager his redundancy was nonetheless progressed and finalised before the interview stage for that position took place. The respondent did not involve HR in the selection process.

Under section 7 (2) (c) of the Redundancy Payments Act 1967 as amended an employer is entitled to carry on business with fewer employees whether by requiring the work for which the employee was employed to be done by other employees or otherwise. The Tribunal is satisfied that the respondent made the claimant redundant without establishing his full range of skills. It is further satisfied that making the claimant redundant resulted in a serious systems security gap in the company's overall skills and knowledge at that time. For these reasons the Tribunal is satisfied that the claimant was unfairly selected for redundancy.

Accordingly, the Tribunal finds that the claimant was unfairly dismissed and the claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds. The Tribunal awards the claimant compensation in the sum of €65,000 under the Acts. This award is made having taken into account the payment already made to the claimant under the Redundancy Payments Acts and the claimant's efforts to mitigate his loss.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

