

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.
UD2090/2009

EMPLOYEE

claimant

against

EMPLOYER

respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. O'Connell B.L.

Members: Mr. R. Prole
Mr M. O'Reilly

heard this claim at Dublin on 21st December 2010

Representation:

Claimant(s) : Mr. William Fawsitt BL instructed by
E M Nagle, Solicitors, 42 Wilfield Park, Sandymount,
Dublin 4

Respondent(s): Mr. Conor Power BL instructed by
McCann Fitzgerald, Solicitors, Riverside One, Sir John
Rogerson's Quay, Dublin 2

The determination of the Tribunal was as follows:-

At the outset of the case a preliminary issue was raised by the representative for the respondent that the claimant had signed an agreement on 8 June 2009 regarding his redundancy and an ex gratia payment. He had the benefit of legal advice before doing so and he is therefore not entitled to pursue a claim under the Unfair Dismissals Acts, 1977 to 2007.

Claimant's Case

The claimant told the Tribunal that he was director of the development unit. At the start of February 2009 forty-nine redundancies were implemented in the Irish Operation. A thirty-day consultation process was put in place with questions and answers. His boss was based in the USA and he was informed that there were no problems in his area as he worked on a critical project

on behalf of a UK company.

A letter addressed to him on 6 March 2009 by HR outlined the details of the termination of his employment. On 9 March 2009 he was summoned to a meeting by PM who was both the MD and his manager and he told him that his role was not being made redundant but that he was being replaced. He went to work on 11 March 2009 and cleared his desk and his personal belongings. He sent an e-mail to his colleagues and thanked them for all their efforts on the project that they had undertaken. He received an email from DP in the USA and he did not understand how the claimant was not consulted on the matter.

The claimant asked HR for legal advice, they stalled for ten days to two weeks and he did not receive answers to his questions. He received an e-mail from PM, MD on 19 March 2009 in answer to his questions. It had taken from 9 March 2009 to 31 March 2009 to receive answers. He did not know why he was being made redundant. Prior to he being made redundant PM tried to move the claimant and his team to Galway. Poor relations existed between PM and the claimant and his team.

He had a family bereavement on 24 March 2009. In an e-mail to PM he outlined his disappointment with the answers he had received to his questions. He had until 17 April 2009 to sign the agreement and he obtained legal advice in this regard. By e-mail from JE, HR dated 17 April 2009 he was informed that it was his last day of employment and he was asked to choose a date and time to come to the office to sign the severance document. He was informed that if he did not sign this that he would not receive the exgratia element of the package and the deal was off the table. He received daily calls regarding this. His legal advice was to invoke the grievance procedures. He advised PM, MD that he was invoking the company grievance procedure and he asked PM to desist from pressurising him into making a decision.

On 23 April 2009 he sent an e-mail to TS, (PM's manager) in the USA in which he outlined in detail his grievance, his employment with the respondent and the redundancy process. He was no longer on the payroll from 17 April 2009. He received a reply from TS on 30 April 2009 in which he indicated that it would not be appropriate for him to deal with the matter. On 1 May 2009 he received a letter from the HR director, which indicated, that €55,070.27 ex gratia termination payment was available to him subject to him signing a compromise agreement. This ex gratia payment was an acknowledgement of the years of service the claimant gave to the respondent. The respondent asked him to reflect on this decision, as the redundancy of his position was genuine and the selection fair.

He had a young family and the offer was off the table if he did not sign it. The job market was very bad, he had no work, no money and he told his solicitor that he needed money to live. He signed the letter on 8 June 2009. He had gone to recruitment agencies and they usually had jobs in autumn and spring. He panicked and he needed the money. He felt the e-mail he received on 17 April 2009 was a threat and if he did not play the game the money was off the table. He was not thinking straight when he signed the document. He was given a cheque on 8 June 2009. In September 2009 he reflected on what had happened, he thought long and hard about it.

He was not made redundant, he was replaced and he disagreed with the choice of redundancy. He did not negotiate the severance document, it was a template dated 6 March 2009 and given to him on 9 March 2009. If he did not sign he would not receive the money, he felt he was not made redundant that he was sacked on no grounds.

In cross-examination he disagreed that he was told on 9 March 2009 that his job in the respondent

was no longer available. A number of e-mails commenced on 11 March 2009. He received information from PM, MD but he did not answer his questions. He sent an e-mail to JE, HR. He felt that no one was telling the truth. He could not get answers as to why his role was being replaced. He had compiled information and he hoped that the respondent would revert to him. After all the tense meetings he felt that there was no point in having a conversation, he felt the respondent was under huge pressure to get him to sign the compromise. He replied to PM on 31 March 2009 and he received e-mails from JE HR on 15 and 17 April 2009. He told PM his dismissal was unfair and he felt that HR and PM stalled. He was informed as and from 17 April 2009 he was no longer an employee. The scores that he received in his performances ratings were incorrect

He signed the agreement on 8 June 2009 and he had read it on 9 March 2009. He discussed the process with his solicitor from 9 March 2009 onwards and he tried to get as much information as he could as to why he was replaced and when it came to June 2009 he needed the money. He felt that the e-mail dated 17 April 2009 from the respondent was spiteful. He felt the respondent was likely to take the deal off the table. He exhausted all the answers to try and get it of the table. The goalposts had changed and he never knew on 8 June 2009 if he would get his money. He did not believe anything the respondent said. When asked if the e-mail dated 17 April 2009 was a threat he replied it was a redundancy and he could take it or leave the exgratia. He did not want to talk to JE HR at this time as he was away for a week.

Determination on Preliminary issue

The Tribunal by majority with Mr. O Reilly dissenting dismisses the claim on the Preliminary Issue and determine that the claimant does not have an entitlement to have his case heard under the Unfair Dismissals Acts, 1977 to 2007.

The following is the dissenting opinion of Mr. M. O'Reilly

Mr. O Reilly is of the opinion that the claimant was deprived of any opportunity to make an input into the so-called agreement. The procedures therefore were flawed and the claimant was under duress when he signed the agreement.

Majority Decision

By majority decision the Tribunal believes that while the claimant may have been dealt with unfairly by the respondent and had the benefit of time and legal advice before the 8 June 2009 being the date he signed the severance/compromise agreement and accordingly the Tribunal believes the claimant is bound by the agreement and is estopped from bringing a claim under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

