

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

- claimant

CASE NO:
UD2131/2009
RP2391/2009
MN1974/2009
WT899/2009

against

EMPLOYER

- respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Herlihy
Members: Mr. T. L. Gill
Mr. F. Dorgan

heard this appeal in Limerick on 20 September 2011
on 5 December 2011

Representation:

Claimant: Mr. Michael Purtill BL instructed by
Aoife Thornton, Pierse & Fitzgibbon, Solicitors, Market Street,
Listowel, Co. Kerry

Respondent: Mr. Chris O'Donovan, IBEC, Regional Director, Gardner House,
Charlotte Quay, Limerick

At the outset the claims under the Redundancy Payments Acts, 1967 to 2007, the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and the Organisation of Working Time Act, 1997 were withdrawn.

Respondent's Case:

The Human Resources Manager (HRM) gave evidence. He explained the business of the

respondent company, which was a global company, constructing automotive parts. The company had two plants in Ireland – Abbeyfeale and Mallow with a combined workforce of over 1,000. The claimant was employed in the Abbeyfeale plant as a toolmaker from 6 March 2000.

Business began to decline and on 18 September 2008 a memo was sent to all staff from the witness and the German Managing Director (MD). It explained that due to the fact that their customers were taking extended leave over the October bank holiday and over the Christmas period capacities and costs would have to be adjusted. They were in difficult times. Restrictions on overtime would take place immediately. The Christmas break in both plants would commence on Monday 22 December 2008 to Monday 5 January 2009.

On 3 October 2008 another memo was distributed to all staff from the witness and (MD). It explained that they were continuing to monitor the situation as well as customer demands and that they were in a period of uncertainty. It was “impossible to project the final consequences”. They were also informed that the plants would close for an additional day after the October bank holiday. On 17 October 2008 another memo was distributed to all staff. The market place had continued to deteriorate and it appeared that the “crisis” continued, “to deepen”. A reduction of 15% in orders was predicted.

On 10 November 2008 a memo issued to inform staff that market developments were in “deep crisis” which continued to deteriorate. To ensure that the company did not overproduce and stockpile stock, it was decided to close the Abbeyfeale plant for an additional 3 days from 21 November to 25 November 2008 and to extend the Christmas closure in the Abbeyfeale plant for 2 weeks from Monday 22 December 2008 to Monday 12 January 2009.

On 4 December 2008 staff were informed that the plant was now to close from 13 December 2008 to 12 January 2009. On 16 January 2009 the Managing Director (MD) addressed all staff and informed them that due to the lack of business it was regrettable that the workforce would have to be reduced by 300, 200 in the Abbeyfeale plant and 100 in Mallow. The night shift was to close in the Abbeyfeale plant, lines were to be reduced in the Mallow plant, the Abbeyfeale plant was to close every second week and the Mallow plant was to close some shifts also. Consultations would continue with employee representatives in all matters including redundancies. It was envisaged to initially have a voluntary programme followed by a compulsory programme.

On 23 February 2009 the witness posted a notice stating that applications for voluntary redundancy were being sought and would be considered. Redundancy calculations and application forms were available from the personnel department and the closing date for receipt of applications was Monday 2 March 2009.

On 26 January 2009 a memo was distributed. It listed the amount of each staff category to be made redundant. In relation to the claimant’s occupation, one toolmaker was to be made redundant in his section (injection moulding) and two in the toolroom. The witness told the Tribunal that the selection process used in selecting people to be made redundant related to their length of service and retention of skills.

On 30 January 2009 the claimant and two of his toolmaker colleagues in the injection mouldings section lodged a formal grievance regarding the establishment of two separate

grades within the toolmaking department and the company's inaccurate publication of seniority listings concerning the said toolmaking grade within the Abbeyfeale plant. This grievance was heard by the claimant's Manager (TOB) and was later referred to the personnel department.

On 11 March 2009 the witness and the Manufacturing Manager confirmed in writing that the claimant had been selected for redundancy. His final date of employment was to be 8 April 2009. He was to receive statutory redundancy plus an ex-gratia payment totalling € 46,584.00. This ex-gratia payment was being paid as a full and final settlement of all claims arising from his termination. The claimant accepted and cashed the payment but did not sign the waiver against any further claims against the company.

On cross-examination he again stated that the selection for redundancy depended on seniority and the retention of skilled personnel. Management of each department reported to senior management of the defined skill set of their respective staff. The Manager of the toolroom (MQ) and the union representatives satisfied senior management that the skill set of his staff should remain in the respondent's employment for the greater benefit of the company.

The claimant's representative produced two lists of staff employed as toolmakers with the respondent. The witness stated that he could not recall when these lists were requested but stated that the union had requested updated seniority lists from time to time. When put to him if the first seniority list was used the claimant would not have been made redundant and the respondent had changed and used the second seniority list used for redundancy he disagreed.

He recalled a meeting on 2 April 2009 in Rathkeale. He could not recall the seniority lists of 2008 and 2009 being discussed but he did recall discussing appraisals. There were several senior management meetings. The decision was made to make the claimant redundant. When asked, he stated the rationale for the selection of the staff to be made redundant was made quite clear to all staff. When put to him that the claimant's grievance was not dealt with according to company policy, he replied that the personnel department had dealt with the matter. The matter had also been brought to the Rights Commissioner but the Rights Commissioner could come to no conclusion and the matter was withdrawn to be later lodged with the Employment Appeals Tribunal.

When asked about other employees that had less service than the claimant that were kept on, he replied that they had a better skill set than the claimant. When put to him concerning another member of staff being trained in Germany in spark erosion (a very skilled duty with the respondent), he replied that he had. When asked by the Tribunal he explained that there were two types of toolmakers in the respondent company. The claimant was not employed in the more skilled spark erosion section.

The Production Manager (TOB) in the injection moulding section and Manager to the claimant gave evidence. He gave a history of his vast experience with the respondent company. He explained that he joined the company in 1995 working in Newcastlewest. In 1999 he was appointed as the Production Manager of the injection moulding area, which was moved to the Abbeyfeale plant.

On perusing the claimant's appraisal forms he stated that the claimant was an excellent worker and they had a very good working relationship. He agreed business had declined and he accepted there was a necessity for redundancy to sustain the rest of the company. All

departments were reviewed and it was decided that staff would remain working depending on their seniority and their skill set. It was decided that his section would reduce by one member of staff. The claimant was chosen to be made redundant because of his length of service and his skill set. Alternatives were discussed but the claimant did not have the skill set to work there.

On cross-examination he stated he had fought to keep all his staff when redundancies were being discussed. (MQ's) area was found to be more critical to the company. When put to him that he had not dealt with the claimant's grievance, he responded that he felt he had done what he thought was right. He had written to the claimant regarding his grievance but did not agree with its contents on "a personal level". He attended the meeting with the claimant, union representative and other management. The claimant felt the grievance procedure had not been exhausted. He checked and told the claimant that it had not. When put to him he said that the claimant could have told him that he could have been trained on spark erosion.

When asked he said that he had been aware that there had been a seniority issue between the claimant and another colleague (BOS). (BOS) was more skilled than the claimant and had been retained. When the claimant signed the RP50 form to receive his redundancy package, he did not sign the waiver form, which included an ex-gratia payment for a full and final settlement.

(MQ) gave evidence that he has been employed by the respondent since 1997. He assumed responsibility for the tool room where the claimant was employed in 2003. The company invested in new equipment in 2004 including spark erosion machines. The spark erosion machine is used as the final stage in the production process. Employee (BOS) who joined in the company in the year 2000 had 8 years experience in spark erosion and brought a lot of experience to the company. He was also involved in the purchasing of the new spark erosion machine. He would have been made redundant on the basis of his length of service but he had a greater skill set than the claimant. It was necessary for the company to retain (BOS) in employment because of his skills. The company has not hired any employee within the tool room since January 2009.

Under cross examination he confirmed that seniority and the retention of key skills were the criteria used for the redundancy process. He accepted that there was no official document outlining this position at the time they redundancies were implemented. He confirmed that (BOS) and another employee (PB) had been sent to Germany on spark erosion training for 5 days and they operated the spark erosion machine on a daily basis. He disagreed that 5 days training would have brought the claimant to a level of proficiency on the spark erosion machine. He had a meeting with the claimant in April 2009 and had no recollection of saying to the claimant that "you are tiring me" at that meeting. The meeting was direct and courteous. He confirmed that it was not his responsibility to ascertain if the claimant could have been employed elsewhere within the company.

Claimant's Case

The claimant gave evidence that he joined the respondent company as a toolmaker in March 2000. He had 20 years experience in tool making prior to joining the respondent. He enjoyed a good working relationship and there were never any issues with his work performance. He accepted that there was a downturn in business and redundancies were announced in 2008. At that time he was shown a seniority list by his trade union showing that he had more service

than employees (BOS) and (MOM) both of whom were retained by the company in employment when he was made redundant. He, nor his union ever agreed to the use of seniority, subject to the retention of key skills as the criteria for selection for redundancy. The company told him that the skills of (BOS) were more useful to the company than his skills. In that regard he requested training on spark erosion on several occasions but this was never provided to him. He believed that he would have been proficient in spark erosion had he been given two weeks training. He accepted that he never used the spark erosion machine in the respondent company.

He gave further evidence that his skills and experience were never discussed by the company at any stage. His skill set was never examined. He outlined to the Tribunal various other jobs that he could have carried out including production operator, material handler and maintenance technician but he was not offered any of these alternative positions. He confirmed that he received a payment of €43,248.00 from the respondent upon the termination of his employment. He met with (MQ) in April 2009 along with the shop steward and (MQ) stated to the shop steward that "you are tiring me". He was dismissed on 8 April 2009 and did not sign the waiver as requested to do so by the respondent.

(PB) gave evidence that he worked as a tool maker with the respondent and was then promoted to tool room leader. He took voluntary redundancy from the company in 2008 and nobody from within the company tried to prevent him from taking voluntary redundancy. He gave evidence that the respondent company sent him to Germany in 2006 for 5 days to receive training on spark erosion. He would have trained the claimant in 5 days on spark erosion if he had been requested to do so by the respondent. He told the Tribunal that employee (BOS) did not operate the spark erosion to its maximum and he made the company aware of that prior to the termination of his employment. He confirmed to the Tribunal that the claimant could have performed many other jobs within the company other than tool making.

Determination

The Tribunal carefully considered the evidence adduced by the parties. The Tribunal is satisfied that the selection process for redundancies adopted by the respondent was questionable. However the Tribunal also recognises that the respondent actively engaged with the union, on behalf of the workforce in general in arriving at a final settlement which the Tribunal considers generous.

Therefore the Tribunal is satisfied that the claimant was adequately compensated under the package and his claim under the Unfair Dismissals Acts fails and is hereby dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

