

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
EMPLOYEE

- *claimant*

CASE NO.  
UD1554/2009

against  
EMPLOYER

- *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms O. Madden B.L.

Members: Mr T. O'Grady  
Mr M. O'Reilly

heard this claim at Dublin on 20th October 2010

### Representation:

Claimant: Mr Krystian Boino, J C Hoban & Company, Solicitors, Suite 114, The Capel Building, Mary's Abbey, Dublin 7

Respondent: Mr. Ken Stafford, Management Consultancy Services, 7 Castletown Court, Celbridge, Co. Kildare

The determination of the Tribunal was as follows:

### **Respondents' case**

A co director gave direct sworn evidence on behalf of the respondent. They operate a print and design company established about 20 years.

In 2008 they recruited a number of new staff as they projected a growth in business. In January 2009 there was a sudden decline in business, they were losing €1000.00 per day. To address this situation they did a number of things, closing their sales office, reducing wages, cutting out directors' pensions and they also needed to make four people redundant. They selected these four staff on the basis of skills, service and the requirements of the business going forward. It was decided that the claimant who worked in finishing area, one printer and two from their design area, would be made redundant. The claimant had no previous experience in printing when he joined the company and had been trained on the job.

Previously in September 2008 they had recruited M who also worked in finishing, M had spent a number of years in the army printing school so was highly qualified. They had specifically recruited M to advise them on the purchase of a bookbinding machine which M would eventually operate. The respondent had been contracting out this part of their business at a cost of €70,000.00 per year; by acquiring a bookbinding machine they would be able to provide their clients with a

better price and service. M was not made redundant, as no one else in the company would have the training and qualification to operate the bookbinding machine when purchased. M could do all the jobs the claimant performed, but M also had the addition of the bookbinding skills. The claimant could have operated this machine with about six months training but because of the financial situation they found themselves in they could not consider this.

The claimant was informed on the 24<sup>th</sup> February 2009 of his impending redundancy, the claimant expressed disappointment but understood the situation. He did not appeal this decision as provided for in the respondents grievance procedure. The witness explained that during the course of the claimant's employment he had always communicated with him in English both verbally and written.

None of the four staff made redundant have been replaced, and since then they have let go another four employees. Their length of service was, 15 years, 6 years, 3 years and one year respectively, from the printing aspect and the sales department.

Under cross-examination he explained that the bookbinding machine was eventually bought in December 2009. The delay in purchasing the machine had occurred as they had difficulties in securing finances for same and also had to build a mezzanine floor to accommodate the machine. M had advised them on the machine to purchase as he had also advised the army on the purchase of a similar machine. He was referred to the manufacturers brochure for the machine in question which quotes "easy to use" the witness responded by saying of course the manufacturer would say this. It was put to him that the claimant in his evidence would say there was no consultation with him regarding his redundancy, he refuted this and said that he had explained to the claimant the staff who were to be let go and why.

He was referred to the skills matrix that they produced and was asked to explain why the claimant was selected for redundancy over M. He explained that the claimant was a qualified carpenter and was trained by them, while M qualified officially as a printer through the army. It was pointed out to him that M was only partly skilled in laminating, he explained that M had not done this in the army however had learnt this since. He accepted that the claimant also did guillotine and packing. He was not aware that the claimant was servicing the plate machine and changing chemicals. He did not consider the claimant's forklift skills during the selection process as others could use the forklift. The claimant may have shown M around the company when he commenced employment. The claimant was not singled out; the company was in a critical situation and needed to make a decision quickly.

He explained that the claimant had done bookbinding for them on a small desktop machine, which punched wired one book at a time. The new machine does 2000 books an hour.

In reply to questions from the Tribunal he confirmed that the skills matrix was produced post the redundancies but accurately reflected their thoughts at the time. The other three employees made redundant at the same time as the claimant, two had four years service while the other had one and a half year's service.

### **Claimant's Case**

The claimant gave direct sworn evidence. He commenced employment with the respondent in September 2004. He is a qualified carpenter through which he has many years experience working with complicated machines so working the printing machines was safer. He learnt his printing skills with the respondent. On a day to day basis he could be packing and finishing small jobs,

using the perforating machine, stitching machine, and guillotine everyday. He also operated the laminate machine and perfect binding machine. He also used the numbering machine when he was producing account booklets. Every week he changed the chemical and cleaned the plating machines. He operated the forklift unloading and uploading the delivery vans. When he commenced with the respondent he was trained by the production manager on all of the machines, this took about two weeks.

He was referred to the brochure of the bookbinding machine that was purchased that M would operate and was asked with his skill sets could he operate same. He replied that operating this machine would be made easy, as it was a combination of two machines he operated. He felt after a day he would be operating the machine okay. He received his dismissal notice from the production manager who informed him that because of difficulties within the company he was one of four staff who were being made redundant. He was not shown the skills matrix at the time of his redundancy. M had commenced in and around October 2008 in the same position as him. M was trained by the production manager and the claimant showed M how to operate the perforation and the laminating machine. The claimant gave evidence of loss.

Under cross examination he confirmed that he had never worked for a printing company nor operated any printing machines before he commenced employment with the respondent. He accepted that he had no knowledge of the bookbinding machine that the respondent had purchased, nor had he seen the machine in question. However he had seen the machine on the internet and as he operated a collating and stitching machines with the respondent and operating this machine would be easy. He did not appeal the decision to make him redundant with anybody in the respondents.

### **Determination**

The Tribunal have considered all of the evidence adduced. It is for the respondent to establish (a) that a redundancy situation arose and (b) that, in implementing this process, it acted fairly and reasonably towards the claimant.

The respondent, when making the redundancies based their decision on the commercial requirements of the company. The respondent had engaged another employee in 2008 for the specific purpose of purchasing and operating a new machine. This new employee could also carry out the claimant's tasks. This employee had experience and expertise in this area while the claimant experience was narrow in this field. The Tribunal finds that the claimant was not unfairly selected for redundancy, therefore his claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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