

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE - claimant

CASE NO.
UD2352/2009
RP2690/2009
MN2181/2009

against

EMPLOYER

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. J. Lucey

Members: Mr. D. Hegarty
Mr. D. McEvoy

heard these claims in Cork on 13 October 2010

Representation:

Claimant(s):
Mr. Ross Jackson, Ahern Roberts O'Rourke Williams & Partners, Solicitors,
The Old Rectory, Carrigaline, Co. Cork

Respondent(s):
No legal representation

The determination of the Tribunal was as follows:-

Claims were lodged under the unfair dismissals, redundancy and minimum notice legislation in respect of an employment from the beginning of April 2000 to the end of June 2009. It was claimed that no genuine redundancy had existed and that the employer had replaced the claimant with a

substitute employee on the departure of the claimant from the company. It was also alleged that the claimant had not received a written statement of the terms of his employment, that he had not received pay reduction details in writing and that he had not received sufficient notice of the termination of his employment.

At the hearing, JC (an employee at the receiver's firm) stated that the receiver had been appointed on 11 December 2009, that all of the respondent company's employees had been made redundant by then and that he could not speak as to the fairness or otherwise of the claimant's selection for redundancy in summer 2009.

The claimant's representative stated that the claimant had been paid up to 30 July 2009 i.e. that the claimant had received a month's notice. The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, was not prosecuted.

Giving sworn testimony, the claimant said that the respondent (an amalgamation of two companies) had been in the business of security equipment such as alarms and c.c.t.v.. It was a Dublin company. Cork was the first branch. Then came Limerick, North County Dublin and Sligo.

There was a warehouse and office in Cork. Asked if he had been the branch manager, the claimant replied that he had looked after stock, had kept everything shipshape and had done clerical work. He received no written contract though he asked at least twice. He did not want to rock the boat. He had never had written terms and conditions before.

It was a very successful business that achieved very high sales. There were no problems with staff regarding timekeeping or other issues.

However, when the downturn came the claimant had to beg for supplies from suppliers. There was a 5% pay cut in late 2008. Staff were never told how long that would go on. Then there was another pay cut (of 10%) the next March. The respondent was struggling. There were rumours (as to the respondent's future) in 2009. In May 2009 staff were told that they would merge with another company (SAS) that mainly did c.c.t.v.. However, SAS had a business (VS) which did compete with the respondent. The implications were not known.

By e-mail and hard copy dated 2 June 2009 the claimant (and other staff) was told that the respondent was seeking redundancies due to circumstances outside its control and efforts to find alternative methods to survive having proven unsuccessful.

The letter stated that the staff was entitled to select a representative from within the company to represent the interests of employees and that the respondent had engaged consultants (EX) to meet people selected for redundancy and provide all necessary information.

The 2 June 2009 letter further stated:

"Selection of position will be through a developed matrix system and copies will be provided to each person whose position is selected. Each person will have the right to meet on a one-to-one with your representative to discuss the selection. There is no first in last out selection as it's necessary to maintain key roles and cost efficiency."

The letter concluded by thanking all staff for their loyalty over the years and by reassuring them that the respondent would endeavour to keep the redundancies to a minimum.

The claimant told the Tribunal that he had heard nothing about the matrix and that he knew of no meeting with EX (the abovementioned consultants)

On 22 June 2009 the claimant was told that he was no longer required and that 2 June letter had constituted notice of termination. He disputed the notice point and the respondent subsequently paid him notice.

The claimant subsequently heard that a man had been brought from Limerick to do his job.

The Tribunal was now referred to a letter dated 14 August 2009 from EX to the claimant's solicitors which stated that the claimant had been apprised of the criteria of selection when he had attended a meeting with the owners of the company, that the claimant had raised no objection and that his selection had been "based upon his skills and capabilities and the ability to transfer him to other duties while bearing in mind the consideration and needs of the business going forward".

The letter continued:

"Your Client did not possess the necessary skills or abilities to transfer him to other duties and to this end it was agreed between the parties that the position would be made redundant."

The claimant told the Tribunal that he would not be before the Tribunal if the man from Limerick had not been brought. The claimant stated that, subsequent to his employment with the respondent, he had made extensive efforts to secure new employment but without success.

JC (the abovementioned employee of the receiver's firm) stated to the Tribunal that, if the claimant's selection for redundancy in summer 2009 was deemed unfair, the claimant would have been made redundant in December 2009.

Determination:

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, falls for want of prosecution as it was acknowledged at the hearing that the claimant was paid to end July 2009 in satisfaction of his notice entitlements.

The claim under the Redundancy Payments Acts, 1967 to 2007, falls for want of prosecution as it was not disputed at the hearing that the claimant had received his entitlements when he was made redundant in summer 2009.

However, the Tribunal unanimously finds that it was not established that the respondent had complied with all proper procedures to fairly select the claimant for redundancy. Therefore, the Tribunal allows the unfair dismissal claim and, in addition to the redundancy lump sum given to the claimant in connection with his redundancy in summer 2009, deems it just and equitable to award the claimant compensation in the amount of €10,874.70 (this amount being equivalent to eighteen

weeks' gross pay at €604.15 per week) under the Unfair Dismissals Acts, 1977 to 2007.

It should be noted that payments from state funds in the event of a liquidation or receivership are limited to a maximum of €600.00 per week.

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Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)