

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE *-claimant*

CASE NO.
UD2348/2009

against

EMPLOYER *-respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr E. Murray

Members: Mr D. Hegarty
Mr O. Wills

heard this claim at Cork on 20th October 2010
and 31st January 2011

Representation:

Claimant : Ms Rachel O' Flynn B L instructed by
A J O'Brien & Co, Solicitors, Curraheen Road, Bishopstown, Cork

Respondent : Ms. Anne O'Connell, William Fry, Solicitors,
Fitzwilton House, Wilton Place, Dublin 2

The determination of the Tribunal was as follows:

Respondent's Case

The Finance Manager of the Respondent Company gave evidence to the Tribunal. He described the Respondent as being an Engineering Consultancy concerned with large projects such as water facilities and roads. They have offices in Dublin, Cork, Belfast, Waterford and Galway and were a subsidiary of a UK Company. Because of the downturn in the building industry and cuts in public spending work deteriorated and it became clear that redundancies would be required.

In or around October 2008 there were some redundancies including one redundancy in the Cork office. From the 8th of December 2008 up to October 2010 there have been 265 redundancies in the respondent overall from a starting workforce of 1024.

The respondent was winning very little new work because of the huge reduction in both public and private projects and the need for redundancies was created by the downturn in business.

Ninety per cent of the staff of the respondent are engineering staff and ten per cent are

administrative staff. The Claimant herself was attached to Group Central Services, which comprised of finance, HR, and secretarial services for the respondent. It was not the respondent's policy to apply last in first out. A methodology was developed to determine the value of the individual staff members to the respondent and a points system or matrix was established for the assessment of employees. The matrix assessed individual staff members with reference to six criteria;

1. Qualifications and technical skills
2. Other relevant training
3. Areas of expertise or knowledge
4. Years of experience
5. Business critical role
6. Team balance

It was determined that eight people from the Cork office would be made redundant and the eight to be made redundant were the lowest scoring on this assessment system. The claimant was in fact the lowest scorer.

On the 2nd of February 2009 a meeting was held in the Cork office to announce the possibility of redundancy. Subsequently there was a wave of redundancies in February 2009. On the 20th of April 2009 a meeting was held with the claimant and she was advised of the fact of her redundancy. After the meeting commenced the claimant was given the option of having a colleague present. The reasons for the redundancy were explained to her and she was given a letter of termination, an RP50 Form and an after care package which outlined resources that she could access post-redundancy.

The HR Manager also gave evidence on behalf of the respondent. He described that the non-engineering staff of the Cork office comprised of five individuals. This witness acknowledged that the fact that the existence the matrix or the criteria established by it had never been made known to the claimant and she was not given an opportunity to comment or make representations in respect of its application to her. This witness also indicated that another employee who had some ten years less experience and service with the firm was not made redundant as she was an accounts clerk doing a somewhat different job but he did acknowledge that within two weeks the claimant could be trained to do that person's job. He acknowledged that a request made for parental leave had been refused and he was aware that the claimant was married with five children. The Witness acknowledged that a letter written by the Managing Director after the meeting that the claimant had attended in Cork in February might be interpreted as suggesting that the wave of redundancies was now completed. No consideration was given to finding an alternative role for the claimant.

Claimant's Case

The claimant told the Tribunal that the respondent employed her for twelve years. She previously worked in various other administrative roles. She had attended a meeting in February at which her line-manager discussed the downturn and the fact that there would be redundancies in the respondent. There was an offer of voluntary redundancy made at that meeting. Approximately one hundred individuals attended the meeting, which comprised the vast majority of staff in the Ballincollig office.

Subsequently, on the 13th of February a letter was written by the Managing Director of the respondent advising the staff that redundancies had taken place and she interpreted this letter as

being an indication that the wave of redundancies was now over. She went to work on April 20th 2009 as usual and was called to a meeting with the Accounts Manager and the HR Manager. She had no prior notice of this meeting. She was told that she was being made redundant. The meeting lasted about fifteen minutes, she was given a letter, her redundancy form and a cheque and an after-care package. She was shocked. She did not raise any question of appeal as she felt the matter had been decided and she left the premises shortly thereafter. At the time of her redundancy she knew nothing about the criteria that had been used. She sought legal advice and subsequently her Solicitor received a letter dated the 7th of May 2009 in which the criteria, which were used, were set out. This was the first she knew of this and had never been given an opportunity to comment on its application to her.

She felt on reviewing the matrix that there were areas where she deserved to have higher marks. She gave evidence that there was one employee in particular whose job she could easily do with one or two weeks training as she had already had wide experience of the respondent's various accounts packages. This employee was in the respondent for only two to three years. She felt that the reason that she had been selected for redundancy was because she was married with five children and she had requested parental leave. When she had requested parental leave she was told that it was not available because work was too busy. Since her redundancy she had been seeking work, she had registered with a number of employment agencies, she had registered with FAS and she had in fact got a temporary job as an Accounts Clerk in 2010. She had lost income of €18,701.00 as a result of her dismissal and her preferred remedy in the event of her claim being successful was reinstatement.

She could not recall whether or not the selection criteria were spoken about at the February meeting but her recollection was that they were not. As far as she was concerned the first she had heard of them was when they emerged in a letter written to her Solicitor. She did not know that three other members of staff had been made redundant on the same day that she had. She confirmed that she was given the option of having someone present at the meeting but had not been given any prior notice of the meeting. She acknowledged that she would not be able to slot in to the less experienced employee's role immediately but would need some training but estimated that this training would be one to two weeks.

Determination

Because of the downturn in the economy and the loss of work the Respondent Company found itself in a position where it had to reduce its workforce. The Tribunal accepts that a genuine redundancy situation existed in the Company in 2008. The Claimant seeks to rely on Section 6 (3) of the Unfair Dismissals Act 1977 as amended by Section 5 (b) of the 1993 Act which provides that the Tribunal "*in determining if a dismissal is unfair regard may be had..... to the reasonableness or otherwise of the conduct (whether by act or omission) of the employer in relation to the dismissal*".

In essence an employer must act reasonably in selecting individuals for redundancy.

The Tribunal is unanimously of the view that the conduct of the Respondent fell short of that which is envisaged by this provision and in particular in the following regards;

1. The failure to advise the Claimant of the criteria that were applied in selecting her for redundancy.

2. The failure to give the Claimant any opportunity to make representations on her own behalf in respect of the criteria that were applied to her redundancy.
3. The failure to provide any appeal mechanism for the Claimant in respect of her redundancy.
4. The company adhered rigidly to a system of selection that did not permit any consideration of redeployment.
5. Failing to have any regard to the long services that the Claimant had given the company.

The combination of these factors renders the selection of redundancy unfair and consequently the Claimant is entitled to succeed in her claim under the Unfair Dismissals Act.

Having heard the evidence of the parties and the submissions made on their behalf the Tribunal takes the view that compensation is the appropriate remedy and makes an award of €21,500.00 to take account of actual and prospective loss, from which should be deducted the sum of €7658.46 already paid to the Claimant.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)