

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE
- *claimant*

UD1818/2009

MN1733/2009

against

EMPLOYER – *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P Hurley

Members: Mr T Gill
Ms H Murphy

heard this claim at Loughrea on 12th November 2010, 21st February 2011 and 22nd February 2011

Representation:

Claimant(s): Ms Catherine Connolly BL, instructed by Ms. Aine Feeney
Feeney Solicitors, 1st Floor, Lismoyle House, Merchants Road, Galway

Respondent(s): Mr Shane McSweeney, Solicitor, Lismoyle House, Merchants Road, Galway

At the outset of the hearing the respondent's representative stated that the minimum notice issue had been resolved. The claimant had only been paid one-week's pay in error. The claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 was withdrawn.

Respondent's Case:

The respondent company contended that the claimant was dismissed by way of redundancy and that the selection process was fair. The respondent company produces pharmaceutical products. The managing director (MB) gave evidence that in 2008 to 2009 the company was losing its competitiveness on the UK market and had to reduce costs. A cost saving programme was introduced. The company looked to reduce supplier costs, but also had to reduce wage costs.

The managing director asked all the company managers to assess their own areas and identify the skill sets of the employees therein. In 2009 44 employees were made redundant leaving 175 remaining. The managing director had no difficulty with the claimant's ability to carry out his job.

During cross-examination the managing director agreed that the claimant was a superb employee. He could not recall selecting him to carry out an assignment with another employee on the basis that they were his two best men. He was aware that the claimant had left the company and had returned. He was not aware that he had been headhunted.

The company managers produced a matrix of skill sets. The managing director saw it after its completion. (CC) was responsible for the claimant's area but she has left the company). The managing director wasn't surprised to see that the claimant only scored a three, as he had not been in the Quality Assurance Department long. If he had scored a three in his original department he would have been surprised. The selection for redundancy was based purely on the matrix. He agreed that another employee who scored a three from the same department was still an employee. It was the manager's decision. The managing director disputed that the claimant bringing his safety concerns to management had anything to do with his selection. He would welcome such reports.

The next witness (HD) gave evidence that she was employed as a Quality Assurance team leader and was the claimant's direct line manager. She gave evidence that the claimant had previously been employed by the respondent from 2002 until 2007. He was a good employee with experience in Quality Assurance. She was asked by the Human Resources Manager to contact the claimant with a view to offering him employment. She contacted the claimant enquiring if he would be interested in re-joining the respondent company and he replied that he would be interested and he commenced his second term of employment as a Quality Insurance inspector on 17 September 2007.

On 7 January 2009 all managers were informed that a number of redundancies were going to take place with immediate effect due to the huge drop in manufacturing activities. One post was identified to be made redundant in the Quality Assurance department and, as part of the redundancy selection process the witness was asked by her line manager (CC) to devise a skill set analysis of employees within the Quality Assurance department. Marks were then allocated to the seven employees concerned under ten categories pertaining to the employees daily work. Following the completion of this exercise the claimant received the joint lowest mark along with one other employee known as (JM). The claimant was selected for redundancy on the basis that (JM) had longer continuous service than the claimant. This was the key determining factor in selecting the claimant for redundancy. A total of 44 employees were made redundant throughout the company. The Quality Assurance department was restructured and production work is now checked by other production workers rather than Quality Assurance inspectors.

She gave further evidence that two employees who were made redundant in or around the same time as the claimant have been re-employed in a different capacity by the respondent company. These positions were advertised within the respondent's internal job postings on a notice board located in the canteen area. She told the Tribunal that the claimant was a very diligent worker and often highlighted errors on the part of other employees to her. He reported these issues to her as she was his line manager.

Under cross examination she confirmed that she was in the best position within the company to assess the claimant's ability. (CC) would have relied upon her (the witness) knowledge before making a decision to make the claimant redundant. The decision to make the claimant redundant was taken by herself and (CC). She was very disappointed that the claimant was made redundant. She accepted that she did not consult the claimant's personal file as part of the redundancy selection process. She did not do so as she was intimately acquainted with his abilities. The fact that the

claimant had been headhunted was not a factor when it came to the redundancy selection process. She confirmed that the post that the claimant held was due to be made redundant in the future but there was not a redundancy situation at the time he was made redundant. She accepted that the claimant had raised Health & Safety issues at a meeting in May 2008 and denied that this was a factor in him being selected for redundancy. She was not aware if a similar skill set analysis as that devised by her was used as a selection process for the other redundancies implemented in the company.

Claimant's Case

The claimant gave direct evidence that he worked for the respondent company for a number of years up to May 2007. He left the company in May 2007 and commenced employment elsewhere in July 2007. On 30 August 2007 he received a phone call from (HD) asking him if he would be interested in returning to work for the respondent company. She offered him a position in Quality Assurance and having reflected on the offer over a weekend he decided to accept the position offered to him. He returned to work for the respondent on 17 September 2007.

He enjoyed a good working relationship with (HD) whom he engaged with on a daily basis. He gave 100% commitment to his work and received an excellent review of his employment in his annual review on 23 December 2008. He requested a shorter working week to 32 hours and this was granted to him on 15 September 2008. He was informed that the company were happy to facilitate his request and thanked him for the huge contribution he was making to the company.

In or around May 2008 he raised concerns with the company regarding Health & Safety issues and these issues were addressed at a meeting on 23 May 2008. In particular he raised safety issues concerning procedures in relation to the Atex room. However there was no improvement or no new procedures introduced to deal with the safety issues he had raised. He then raised his concerns with the head of training and the Health & Safety officer but again there were no improvements. He enquired from the Health & Safety officer if the issues would be brought to the attention of the Managing Director, (MB) but was told that they would not as she would deal with the issues herself.

On 10 February 2009 he was informed that he was to be made redundant on 17 February 2009. He was devastated to be told he was to be made redundant. He felt extremely hurt as he had given 100% commitment to his work and expected to continue in employment with the company until he was 65. He had been headhunted by the company and now felt extremely disappointed. He was never shown the skill set analysis relied upon by the respondent in the redundancy selection process. He only became aware of this when he initiated proceedings to the Tribunal. When he viewed this analysis he gave evidence that he had not received marks under three categories which he should have had. He also carried out work under 'validation sampling' and this category was not included in the skill set analysis. He gave evidence that (CC), who made the decision to select him for redundancy was not familiar with his daily work duties.

He gave further evidence that his position was not made redundant on 17 February 2009 and his work continued to be carried out by some other employee until October 2009. He told the Tribunal that on his final day at work (HD) said to him that "they will want you again but I won't ring you for them". He is of the view that he was dismissed because of the safety concerns he had raised in particular in relation to the Atex suite.

Under cross examination he accepted that he had received positive feedback from the company

following the concerns he had raised but ultimately nothing was done by the company. The Health & Safety officer told him that she was not going to report the concerns to (MB). He accepted that the company had identified one position in Quality Assurance to be made redundant and that ultimately 6 employees did the work previously carried out by 7 employees. He accepted that the company had to reduce costs in order to be competitive and accepted that there was a genuine redundancy situation. He did not accept that a last in first out basis should have existed as he had been headhunted by the company. He was of the view that an exception should have been made for him in view of the fact that he had been headhunted. He believes that a proper evaluation of his career should have been carried out and this was not done. He believes that he was seen as a problem employee because of the issues and concerns that he had raised. He accepted that advertisements for positions within the company were placed in the canteen area but could not recollect reading those advertisements. He accepted that he may have done so. He has made no effort to secure alternative employment since his dismissal and currently receives a pension. He has been in receipt of this pension since the age 55.

Determination

The Tribunal carefully considered the evidence adduced by both parties. The claimant contended that the skill set analysis relied upon by the respondent in the redundancy selection process was open to question as it did not take into account all of his competencies. Further it is the claimant's assertion that the analysis was compiled by two persons, one of whom was not fully conversant with his full range of skills sets. However in these circumstances the claimant has not established that an element of unfairness impugns the decision to dismiss him on account of redundancy, particularly when he was, according to the skill set analysis scored jointly with another employee. The Tribunal heard evidence from the respondent that in these circumstances the determining factor was the claimant's shorter service than his colleague.

The Tribunal recognises that the claimant's work record and diligence resulted in him being re-hired by the respondent some four months after he had voluntarily left the company. However this cannot be a relevant factor in the consideration of the redundancy selection procedures. Furthermore the Tribunal is not satisfied that the issues relating to health and safety raised by the claimant were a factor in the respondent's decision to select him for redundancy. Accordingly taking all matters into consideration the Tribunal finds that the claimant was not unfairly selected for redundancy and therefore not unfairly dismissed.

The claim under the Unfair Dismissals Acts 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)