

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF: CASE NO.
EMPLOYEE UD23/2010
claimant
against
EMPLOYER
respondent
under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr. A. O'Mara
Mr G. Whyte

heard this claim at Dublin on 1st April 2011

Representation:

Claimant(s) Ms. Ailionore MacMahon BL instructed by Ms. Dorothy Ware, Donal Reilly & Collins, Solicitors, 20 Manor Street, Dublin 7

Respondent(s): MD of the respondent

The determination of the Tribunal was as follows:-

Respondent's Case

The MD told the Tribunal that the respondent was a small family company. It undertook work in French polishing and floor sanding. In the 1960's French polishing declined and the respondent commenced floor sanding. The business had been in the family for over 100 years and it had undertaken major contracts. It always endeavoured to maintain staff. At the commencement of 2007 the respondent had approximately twenty employees and it currently has nine employees including the MD. He had to let fifteen employees go and these included family members. His mother had to retire from the respondent, as he could not pay her. The respondent had a major contract signed in 2007 but this contract was put on hold. The respondent experienced a major downturn in 2008 and 2009. He had a €50,000 overdraft in the bank. Other employees were let go prior to the claimant.

Out of twelve employees who were made redundant the claimant was number eleven. He had no work for the claimant and the respondent is currently hanging on by a shoestring.

In cross-examination he stated he let employees go if he did not have work for them. The selection for redundancy depended on the standard of work. The claimant was accepted to become a team leader and he was required to drive a van for this position. The respondent paid for driving lessons for the claimant. The claimant told him after six to eight months he was not going to continue doing the role of team leader and he reverted to being a floor sander. He gave the claimant proper notice of his redundancy. The claimant was selected for redundancy because he had made a mess of a job and he did not want to learn to drive.

His nephew undertook work with the respondent for some time as he had difficulties in school; he was paid a sum of money and he has since obtained alternative employment. The respondent still continues to sand floors and employees are on a three day week. Since the claimant left employees roles changed. The respondent did what was necessary to remain in business. He tried to contact all employees in advance of making them redundant. He could not recall if he told an employee TH on 29 May 2009 that the claimant and DD were going to be made redundant. The respondent had hoped that no one would be made redundant. He could not recall if he contacted the claimant prior to informing him of his redundancy by letter dated 10 July 2009. On 21 August 2009 he told the claimant if work became available he would contact him.

In answer to questions from the Tribunal he stated that the respondent charged more for French polishing than for floor sanding. Three employees with shorter service than the claimant were retained. The claimant was made redundant because he did not have a driving licence and he had received warnings. When the claimant was made redundant in August 2009 the respondent had three floor sanders who drove a van. As a team leader the claimant was expected to drive a van.

Claimant's Case

The claimant told the Tribunal he was employed with the respondent since 23 May 1997. He worked as a floor sander. He undertook a major job in a large building in the city on his own. Five or six employees helped him to complete this and he felt it was unsatisfactory to have one employee assigned to this job. He was asked if he would be interested in driving a van and he was told he was under no obligation to do this. He was demoted in 2004 as he had not passed his driving test.

He first heard about redundancy when he received a call from a colleague while he was at home in May 2009. The colleague told him another colleague was also being made redundant. A meeting was called in May 2009 and all the senior employees were present. Employees were informed that no work was coming into the respondent and that employees would be let go. There was no meeting regarding voluntary redundancy.

He received a letter dated 10 July 2009, from the MD, which informed him that he was being let go. Employees with less service than him were retained. He was given six weeks notice and while he was working his notice the MD's nephew was taken on. Few employees had longer service than he had. There were usually three people in the van, a driver and two employees. He felt he was very good at his job. He was always waiting in the yard in the mornings before the van arrived.

In answers to questions from the Tribunal he stated that the respondent retained three employees with less service than him but they were drivers. Work was slowing down and he worked four of his six weeks notice.

Determination

Having heard all the evidence the Tribunal is of the view that the selection of the claimant for redundancy was justified in the circumstances. However, the manner in which the redundancy was carried out was not fair particularly given the claimant's service with the respondent. In the circumstances the Tribunal awards the claimant compensation of €6,000.00 under the Unfair Dismissals Acts, 1977 to 2007 and in awarding this amount takes note of the fact that the claimant received a redundancy lump sum payment

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

