

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYEE

UD2404/2009

Appellant

Against the recommendation of the Rights Commissioner in the case of:

EMPLOYEE and

EMPLOYER

Respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath BL

Members: Mr G. Mc Auliffe
Mr J. Flannery

heard this appeal at Dublin on 9th February 2011
and 9th May 2011

Representation:

Appellant(s): Mr Paul Henry, SIPTU, 6th Floor, Liberty Hall, Dublin 1

Respondent(s): Mr John Barry, Managing Director, Management Support
Services, (Ireland) Limited, The Courtyard, Hill Street,
Dublin 1

The determination of the Tribunal was as follows:-

This case came before the Tribunal by way of an appeal against the recommendation of a rights commissioner (reference number r-075006-ud-09 JOC)

Respondent's Case

BQ told the Tribunal that the respondent is a contract catering company and provided a service to clients in terminal T1 and T2. The appellant was employed as a catering supervisor assisted by catering staff. The appellant was responsible for the managing and operation of the site, directing

staff, services, accounts and he reported to head office. In 2007 there was a downturn in business. The respondent contacted T1 and T2 as patronage was very low and it requested assistance to help to subsidise its losses. Terminal T1 and T2 requested the respondent to reduce losses and to come up with a plan. The respondent looked at the option of reducing catering services. T1 and T2 advised that they would subsidise a café to an extent. The respondent looked at providing a vending service and also at reduced services. As a consequence of that decision the respondent met with employees on site. Six staff were employed at any one time during the day and it was a seven-day operation.

A meeting took place on the 24th October 2008 and after the meeting employees were advised that they would be issued with notice. T1 then indicated it had changed its mind about the vending service and that it would reduce its service. This meant a drastic reduction in employees and the elimination of the catering supervisor's role. Employees were assigned from head office.

She met with the appellant on 30th October 2008 along with the assistant manager. The appellant was informed of the change in operations and that he was no longer required on site. The appellant was informed about the trading difficulties. The appellant received a redundancy form on the 7th November 2008 and he made no comment about the situation. A catering supervisor has not been appointed since the appellant was made redundant.

At the resumed hearing on 9th May 2011 BQ told the Tribunal that she respondent set up a pension scheme for the appellant in November 2008. This was a contributory pension and the respondent paid a percentage for employees if they wanted to avail of this scheme. The respondent arranged for the appellant and a colleague to sign up but the appellant did not go ahead with this. She received a letter from the appellant's representative on the 23rd September 2008. The respondent contacted the appellant's representative on the 29th October 2008. In November 2008 the respondent set up the pension for the appellant and he did not make a contribution.

The appellant made a complaint on 15th September 2008 regarding a discussion he had with DM the Chairman of the respondent on the 4th September 2008. A meeting was arranged for the 18th September 2008. DM was very involved in the respondent and had a shareholding in the respondent. She made DM aware of the complaint on the day she received the complaint from the appellant. DM went to collect the cash and it was not counted, DM told the appellant he was in breach of contract. The appellant was upset when DM mentioned about the cash. The meeting of 18th September 2008 did not take place, as the appellant was ill

She had a meeting with employees and the appellant regarding handling cash. No one knew why cash was missing. Procedures in the respondent were lax in collecting cash and new procedures were put in place. The appellant told her that he would not handle cash until the situation was resolved.

In cross-examination she stated that the respondent made the decision to make the appellant redundant. It was not true that the appellant was selected for redundancy as he had raised a question in relation to his pension. The appellant raised a question about his PRSA pension scheme in July 2008. The appellant would have to pay a contribution in order for the respondent to make a contribution. She received correspondence from the appellant's representative regarding a pension.

The issue of the appellant's pension was raised once. The appellant had to agree to contribute to his pension and he advised her that he would contribute. She advised the appellant on Monday 30th October 2008 that he could take time off to look for work. The appellant could have done

duties as catering assistant and general duties.

In answer to questions from the Tribunal she stated it would be difficult to reduce the appellant's hours. The client had to reduce its costs as it was overstaffed. She spoke to the appellant at length at the second meeting. They discussed the various aspects of the service in general. The appellant was not offered the position of catering assistant, as there would have been a difference of €150 per week in his salary. She along with the area manager decided to make the appellant redundant. Two other employees had longer service than the appellant. The respondent paid in 5% of annual salary with the pension. This was discussed with the appellant in advance. The respondent did not have a difficulty in paying a pension for the appellant.

The appellant was advised of his redundancy six weeks prior. At the time the appellant was made redundant there was no other position for him in the respondent.

The area manager told the Tribunal that she was aware in September 2008 that changes were going to be implemented. She attended a second meeting. Employees worked from 6 a.m. till 8 to 9 a.m. and they then went home. Some employees worked from 6 a.m. to 2 p.m. and returned for 6 to 9 p.m. Employees worked split shifts. In winter employees did not work as many hours. Six shifts had to be covered and the respondent had to reduce hours.

In cross-examination she stated that the appellant had his own taxi firm. She attended a meeting on 30th October 2008. She met the appellant in the office and spoke to employees outside.

S told the Tribunal that she attended work on 30th October 2008 and she was asked to attend a meeting at 12 noon. She saw the appellant in the terminal. She was not present at the meeting on the 24th October 2008. The last time she saw the appellant was on the 30th October 2008.

The Financial Director of the respondent DM told the Tribunal he was responsible for all the respondent's finances. He owned 50% of the respondent and BQ owned the other 50%. On foot of a complaint he received he went to the site and he asked the appellant why he was not collecting cash. The appellant told him that he was not doing it and he told the appellant that he was in breach of his contract. The appellant was very agitated and he questioned DM if he was authorised to do what he was doing. On 4th September 2008 he collected the cash and he did not recall the appellant being there.

In cross-examination he stated that as far as he could recollect the appellant did not raise the pension with him.

Appellant's Case

The appellant told the Tribunal that in July 2006 he commenced employment with the respondent as a catering supervisor in T1 and he undertook work in T2 for a few months. He had a good relationship with his colleagues. Once his union representative wrote a letter to the respondent regarding his pension the relationship changed. He raised issues about his pension at a meeting on the 24th October 2008 and he was told that he needed to go to the union. The next meeting he attended was on the 6th November 2008.

At the resumed hearing on 9th May 2011 he stated that on the 24th October 2008 he was notified that he was being made redundant. He did not attend a meeting on the 30th October 2008. The 6th November was supposed to be his last day in work and on the 7th November he went to Head

Office. Wednesday and Saturday were his days off. He asked at the meeting if it was short term, he had experience of working in many sites. He was anxious to have some work. Six months prior to this in February/March 2008 he contacted his union about a pension and he raised this issue with BQ on three or four occasions.

In cross-examination he stated that he was informed about the pension scheme in the respondent and he needed to speak to someone about this. He does not have a taxi service and he has not obtained alternative employment.

Determination

The Tribunal has carefully considered the two days of evidence. This is an appeal against a Rights Commissioners finding of the 25th September 2009. The Tribunal fully accepts that a redundancy situation existed in the respondent's workplace. The appellant did not dispute this fact. The appellant does, however, suggest that his selection for redundancy was unreasonable and unfair. The appellant's evidence to support this contention was twofold. Firstly the appellant suggested that he was singled out for redundancy by reason of a breakdown in his relationship with his employer. In particular, he said that issues surrounding his desire to get into the company pensionscheme together with his contact with union officials together with some investigations into his management of monies had led to the respondent company having a lower opinion of him than he would have liked.

Secondly the appellant says that the company never once considered the question of restructuring or redeployment to afford the appellant some chance of continued employment. The appellant states he would have taken a lower salary on reduced hours if this had been offered to him at the time of his selection.

Looking at the workplace at the time of the redundancy the Tribunal accepts that the appellant's position was a clear contender for redundancy. There was no need for a 40-hour position at circa €12.50 per hour. That position had to be vulnerable when it came to the difficult decision of making a redundancy.

The Tribunal finds no evidence to suggest that the extraneous issues, which were adduced in evidence, had any bearing on the company decision to make this position redundant. There is no doubt that the position and not the person was made redundant.

However, the Tribunal does accept the contention that the company made no attempt to consider returning the appellant in any capacity whatsoever. Having considered all the evidence the Tribunal cannot make a finding that the appellant would have been materially better off had he been retained. As a matter of practicality the Tribunal does not accept that targeting catering assistants jobs would be fair on that class of employee in order that the company could save the appellant. Whether other positions in other outlets would have been considered was not addressed by the respondent and to this extent they acted unreasonably.

In those circumstances the Tribunal cannot make any further award of compensation and simply affirms the recommendation of the Rights Commissioner in the amount of €1,000.00 under

the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

