

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE
- *claimant*

CASE NO.
RP713/2010

UD523/2010

against
EMPLOYER
- *respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr G. Hanlon

Members: Mr D. Moore
Ms. P. Ni Sheaghda

heard this claim at Dublin on 6th January 2011

Representation:

Claimant(s) : In Person

Respondent(s) : Maeve O'Sullivan, IBEC, Confederation House, 84/86 Lower
Baggot Street, Dublin 2

Preliminary Point

The claimant withdrew his claim under the Redundancy Payments Acts 1967 to 2007 on the day of the hearing.

Summary of Evidence

The administrator of the respondent organisation gave evidence that the respondent is a fee paying school within the Dublin area. It caters for 900 pupils, some of whom are boarders. The Tribunal heard evidence that the school employed two porters, a day porter and a night porter. The day porter lived on the school grounds and his working hours were from 7am to 3pm. His work included opening the school buildings, kitchen work, waste disposal, running errands to shops and

chemists. He also returned to the school at 4pm until 6 pm and carried out some cleaning duties. As he resided on the school grounds he was also a presence to deal with late callers and deliveries. The school also employed a security guard to patrol the school grounds of 50 acres. CCTV was introduced in early 2000 which had the effect of the security guard being able to monitor the school grounds from within the administration building. As a consequence the security guard gradually took on some of the night porter's duties. In 2007 the working hours of the night porter changed from 3pm – 9pm to 2pm – 8pm. The claimant, who was employed as the night porter negotiated a reduction in his duties following this change to his hours of work. Various tasks were taken away from the claimant.

The Tribunal heard further evidence that the school receives government grants funding. Due to the downturn in economic conditions this funding was cut and the school received no grant funding in the year 2010. As a result of the cuts to its funding it was necessary for the school to introduce cost saving measures. Invitations were sought from staff as to how these savings could be achieved and in March 2009 the school offered a voluntary redundancy package to all non-academic staff including the day porter and night porter. Neither porter was interested in accepting the offer of voluntary redundancy and the respondent identified that the position of night porter be made redundant. In the absence of any pre-existing redundancy criteria the respondent devised a skills matrix as the criteria for deciding which porter should be made redundant. It was necessary to assess the skills of both employees before reaching a decision and both employees were invited to contribute to the process. However neither employee chose to make a contribution to the process. The witness, in conjunction with the employees line manager awarded marks to both employees under seven categories pertaining to their work duties. The claimant received less marks than his colleague and accordingly was selected for redundancy. He was notified of the outcome of the process and was given his notice on 12 May 2009 and paid his redundancy entitlement along with an ex-gratia payment. His employment was terminated on 19 June 2009.

The Tribunal heard evidence from the claimant that he was never offered an alternative to redundancy. He was prepared to work in other positions within the cleaning, maintenance or ground staff. He was prepared to be flexible and work reduced hours but this was not offered to him. No alternative solutions or any other working options were put to him by the respondent. He was one of the longest members of staff and had longer service with the respondent than his day porter colleague. At the end of the process he requested the markings from the skills matrix system but these were never provided to him.

Majority Decision

The Tribunal finds by majority decision with Ms. Ni Sheaghda dissenting that the claimant was not unfairly dismissed and the claim under the Unfair Dismissals Acts 1977 to 2007 fails.

The following is the dissenting opinion of Ms. Ni Sheaghda

The respondent gave evidence that they made a decision to make the post of night porter redundant. Subsequent to this decision they offered voluntary redundancy to the two porters they employed, one a night porter the other a day porter. Both porters declined this offer.

The employer then proceeded to design selection criteria. This criteria was based on the requirements for the one remaining porter's position. It was divided into seven criteria each allocated a mark; six allocated 15 marks and seventh 10 marks, total score achievable was 100.

The employer then proceeded to assign marks to the two porters based on the role they were employed to undertake at the time. This is where the criteria became unfair as clearly the night porter (claimant in this case) was disadvantaged due to the fact that the criteria required was based mainly on the role of the day porter as a decision to dispel with the night porters job had already been made. The criterion was therefore biased against the night porter as he could not possibly gain scores for roles that occurred when he was not rostered for duty.

Determination

The employer devised a matrix as a criteria for deciding which porter should be made redundant and invited both porters to contribute to the design of the matrix. This offer was not taken up and the employer was left in the situation where they had to design their matrix based on the criteria for the new position.

Evidence was heard that the employer allocated marks based on seven criteria. It was the opinion of the majority of the Tribunal that these criteria were not unreasonable and given the fact that both employees were invited to contribute to the criteria it would be unreasonable to conclude that the employer contrived certain criteria in order to place one employee over a disadvantage to the other. Further, the criteria devised in the matrix were based on the reasonable assumption of the job required which was not redundant. The majority of the Tribunal is not convinced that the claimant was at a disadvantage as a result of this in the scores being marked and consequently the claimant's case that he was unfairly dismissed is not substantiated.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

