

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF: CASE NO.  
EMPLOYEE UD306/2010  
against *claimant*  
EMPLOYER  
under *respondent*

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr P. Pierce  
Ms M. Maher

heard this claim at Dublin on 7th June 2011

Representation:  
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Claimant(s): Mr. Ken Stafford, Management Consultancy Services, 7  
Castletown Court, Celbridge, Co Kildare

Respondent(s): Mr. John Dunne, Matheson Ormsby Prentice Solicitors, Sir John Rogerson's Quay,  
Dublin 2

The determination of the Tribunal was as follows:-

#### **Respondent's Case**

POR (the general manager) told the Tribunal that at the end of 2008/early 2009 the respondent implemented a number of redundancies. Approximately forty to fifty employees were made redundant across the board. The claimant undertook work on residential sites, houses and apartments. There was no work and the respondent had to make ongoing decisions. In November 2009 the respondent had one major development (T development) consisting of one hundred and thirty five apartments. Work ceased on this project in 2009. A number of employees were made redundant in early 2009 and the claimant was one of the employees made redundant. He met the claimant in the office on the 4th November 2009 and told him that the respondent had no option but to make him redundant. The claimant was disappointed and he told him he had no alternative. He told him to talk to SON financial controller. The claimant had

accepted the situation, which was due to the downturn in the building industry, and a number of redundancies were implemented. The claimant did not raise any points at the meeting. The respondent had no alternative on the 4th November 2009 but to get the claimant an ex gratia amount and a number of other amounts. The respondent considered itself to be a good employer. Another quantity surveyor was also laid off. Another quantity surveyor SR remained on for a period of months and he undertook debt-collecting duties. The claimant was one of two senior quantity surveyors made redundant in November 2009. All quantity surveyors reported to the claimant and his colleague. The junior quantity surveyor that was retained was earning two thirds of the claimant's remuneration. Operatives and other employees were made redundant in 2010. The respondent now has twenty-five employees. At its peak it had sixty to two hundred employees and subcontractors.

In cross-examination he stated that he was director in charge of construction and he retired in early 2009. He then returned to the respondent as a part time consultant. Because of the downturn this was not a full time position and he was frequently in and out of work. The claimant reported to him even after he retired and undertook work as allocated by him. The claimant undertook some work on joint ventures. He made the decision to make the claimant redundant. He met with the board and had meetings at different times and reviewed the situation. He did not have terms of employment beyond the statutory terms of employment. When asked if the claimant did not get documents in writing he replied the claimant was well aware of what was going on. He did not personally have written terms for his employees. The claimant was well aware from discussions that the respondent had problems. On the 4th November he met the claimant and told him his job was finished and that they would pay him until the end of the year. When asked if the claimant did some work on commercial properties he replied that he did some work on a shopping centre. The claimant had the longest service and IZ had the second longest service. IZ was a junior assistant quantity surveyor in 2002.

In 2009 there were changes to the pension scheme and his colleague dealt with the pension issue. He was aware of who did and did not retire in 2008 and 2009. He obtained a pension from the respondent and he could not comment on any employee's pension. He was sure that the claimant's pension came out of the same fund as his. He was not aware of the pension being under funded after a number of senior people retired from the respondent. No one was forced to sign anything. He did not recall the claimant raising issues about his pension and he referred the claimant to SON. He told the claimant that he had reached retirement age and that he was retiring in Autumn 2008. Ms. D who worked in the office would not have known in July 2009 that there was going to be a reduction in the number of quantity surveyors in the respondent. Mr. H was a land surveyor and the witness was not aware that he became involved in the claimant's work. He told the claimant on the 4<sup>th</sup> November 2009 that no further work was being undertaken on the T Development and he told him that he would pay him until the end of the year. The claimant knew full well what was happening in the respondent.

He did not ask the claimant if he would work for a lower salary. He did not consider the role of project manager for the claimant in November 2009. The company did not have an appeal process to avail of on termination of employment. The respondent had a serious shortfall in work.

In re-examination he stated that IZ was not a senior quantity surveyor.

In answer to questions from the Tribunal he stated that the other jobs would not have suited the claimant. In early 2008 the respondent had one hundred and sixty to two hundred direct employees. It now has twenty-five in total.

SON the financial director told the Tribunal that the claimant received one-month's notice payment. The respondent agreed to pay him additional payment and holiday money. The claimant had been employed with the respondent for 9.1 years. He discussed with the claimant how the respondent would pay him. The claimant was going to go away and think about it. The claimant was not unfairly selected for redundancy. He met the claimant on the 10th November 2009 for more specific discussions and no one else attended the meeting. The claimant had doubts about what he said to him. He felt it was very important to get it right. He received an e-mail from the claimant and he could not recall if he replied to it. He did discuss the matter with him. The claimant was given his redundancy and an ex gratia payment which he was not obliged to give to him. He asked the claimant to sign receipts and he told him that he was not putting anything in writing. He had no real engagement with the claimant after that.

In cross-examination he stated that the claimant received his RP50 on the 13<sup>th</sup> November 2009. He was not aware that it was supposed to be given to the claimant two weeks prior to that. He assumed that the claimant was paid all the benefits he was entitled to. Three senior people returned from the respondent before May 2008 and these included the principal shareholder. Employees who were made redundant were entitled to get paid out of the pension fund. The fund had a significant deficit before changing over to a defined contributory scheme. A letter issued to the claimant on the 26<sup>th</sup> May 2009, which he signed on the 29<sup>th</sup> May. He communicated with all members of the pension scheme. He arranged for DS who was proficient in pensions to come to the office and all employees had the opportunity to discuss the contents of the defined contributory scheme. The defined contributory scheme was not the ideal substitute for the defined benefit scheme. The majority of employees raised questions regarding the accrued benefit.

### **Claimant's Case**

The claimant told the Tribunal that he undertook work for the respondent in residential and commercial property. He was an experienced quantity surveyor. He enjoyed his work until the end of May 2009. After this he felt senior management treated him differently after he raised an issue with his pension scheme. He directed his questions to POR who asked him to speak to SON. He did not know POR's date of birth and he was not aware he was retiring. He had a meeting with POR about his pension, he asked some questions and he noticed that POR's attitude changed after that. It was quite obvious that he was being ignored in the mornings and he felt isolated to a certain extent. He mentioned this to colleagues. He was given a company car in 1999 and when he received it there was oil spilt in the interior and it had no NCT, no tax and had a number of bangs. He told POR that this was not suitable. He was informed that POR was looking into the matter. He suggested that he would get a car himself and claim expenses. Prior to his holidays in July 2009 he was walking through the office Ms. D mentioned that she was concerned about the Quantity Surveyors and who did he think should go. She made a comment that he had no commercial Quantity Surveyor experience; it put a damper on his holidays. He was on the site one day and he was the only one there. He was informed that all employees had gone to the funeral of an employee. He did not receive the e-mail regarding this.

A land surveyor BH gave him instructions to issue terms to subcontractors and this was something that did not happen before. In or around September 2009 POR asked him about the meetings schedule and POR instructed BH to attend meetings. The first meeting with a solar panel company BH attended with him. POR did not tell him that BH should attend meetings. BH issued the tender for a subcontractor job. BH reported to POR on the outcome of the meeting and the claimant usually did that. He would have been trusted in the respondent, this would have been his

responsibility. This made him feel that his knowledge was not valued as it was in the past. He did not know what was behind it. He felt in late September that matters were getting worse.

In October 2009 he was no longer invited or notified of meetings. Employees who previously did not attend meetings were now attending meetings. BH replaced him at meetings instead of accompanying him. BH came out of meetings and instructed him to compile information and reports. He was put under a lot of pressure. He had lost his assistant and was under severe pressure to keep up with his work. It could take six months to finalise a project. There was no indication that his job was on the line. He was not given written details of his redundancy. He did not have the opportunity to make a case to be retained. He was not offered an alternative position or a decrease in salary. He asked who else was being let go. He was told the information was confidential. He was told MC was being let go and he asked if IZ was being let go. He was informed that IZ was a junior and that was not correct. The claimant attended meetings with IZ on several occasions and they were the same level. The claimant had a junior assistant working for him. The claimant worked on commercial developments as well as residential. At the time he was let go the respondent had plenty of residential work. He did not sign a disclaimer; he was put under severe pressure. On the following day POR visited him a number of times and he became very agitated.

He was not told who was doing his work after he was let go. He was told to hand over work to sites and the foremen did not have a clue what he handed over. The foremen could not undertake the work that he did. He could have undertaken the work that IZ did. He had experience of undertaking project management in 2002. He had three specific developments. At the time he was made redundant a number of site foremen were employed. A health and safety person was retained. In November 2009 he felt he was isolated and that it was not a true redundancy situation.

In cross-examination he stated that he mentioned to other employees in the respondent that matters started to change in the respondent. He did not have these employees at the hearing, as he did not want to jeopardise their careers. He was the quantity surveyor that was invited to meetings and no quantity surveyor attended meetings with the land surveyor BH. He disagreed that it was unnecessary for a quantity surveyor to be at the meeting. He complained the end of September to October 2009. He was given his notice on the 4<sup>th</sup> November 2009. He did not make an issue that he should attend meetings. He complained to the foreman. When he commenced employment with the respondent he had two assistant quantity surveyors. He was excluded from new work. On the 4<sup>th</sup> November POR came to his office and he was summoned to his office. The claimant asked two to three questions about who was let go. He asked POR is that it and he said yes and he then returned to his office. He was not given the opportunity to express an opinion and as far as he was concerned he was told that the decision was made.

The majority of employees made redundant were trades people. In Easter/April 2009 he along with MC had no dealings with Mr. T. His assistant quantity surveyor was let go in early 2008. He resigned and went to another company. He made a case on behalf of the second assistant quantity surveyor and he was told he was being let go.

He recalled a meeting that involved a telephone call to a tax consultant. At the meeting he was told that it would be good for him to cash his pension. He was told he would get €10,000 and he thought this was a strange situation. He was pressurised to signing a waiver but he did not sign it.

In answer to questions from the Tribunal he stated that since his dismissal he sent out forty job applications and applied directly for one hundred and fifty positions. BH is still employed with the

respondent as a land surveyor. BH had no experience of contract documents, pricing or tendering. He attended a meeting to switch from a defined pension to a contributory pension. The conversation was not confidential.

**Determination**

Having considered all the evidence adduced the Tribunal finds that a genuine redundancy existed and the claimant was not unfairly selected for redundancy Therefore his claim under the Unfair Dismissals Acts, 1977 to 2007 fails..

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)

