

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE
-claimant

CASE NO.
UD413/2010

Against

EMPLOYER
-respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr L. S. Ó Catháin

Members: Ms M. Sweeney
Mr O. Wills

heard this claim at Cork on 10th February 2011 and 31st May 2011

Representation:

Claimant: Ms Clare O'Shea-O'Neill, O'Shea-O'Neill, Solicitors, Church View,
Ballinlough Road, Cork

Respondent: Mr. Conor O'Connell, Construction Industry Federation, Construction House,
4 Eastgate Avenue, Little Island, Cork

Respondent's Case

A Director (MM) of the respondent gave evidence of the downturn in business within the company. The respondent is a scaffolding company that specialises in maintenance work for pharmaceutical companies in the region. The people employed by the respondent have additional skill sets and abilities as well as being scaffolders, as the work requires employees to be able to complete a job independently. The respondent receives emergency calls from their customers and needs to have staff available to him that can attend to the emergency in its entirety.

The main contract the respondent held was with a large pharmaceutical company for the maintenance of the main plant and as part of the construction on a second building. When the building project ceased the respondent had to re-organise all the staff and downsize the company.

The claimant worked on the building project. The claimant was placed on the building project, as there was numerous other staff on the site that could fill in the gaps in the claimant's skill set. The

claimant's lack of all the skills was not an issue until the building project finished and he would be required to work on his own.

The respondent made a number of people redundant in 2009 using their skill sets as selection criteria. The claimant was made redundant on the 1st May 2009. The claimant lacked the following important training/skills as specified by the respondent in the selection criteria: driving licence, MEWP, forklift, scaffold anchor, banksman/signaller, first aid and confined space. The four Directors of the respondent made the decision to make the claimant redundant.

The respondent had a meeting with the main union to agree all redundancy procedures 4 weeks prior to the claimant's redundancy. The union agreed to the selection criteria as outlined by the respondent. The claimant had been informed informally on many occasions that business was tough and redundancies would be taking place. All staff were aware that skill sets were used as the selection criteria for redundancy although they were not issued with the definitive list. The witness held meetings in the canteen and informed the staff of the possibility of redundancies and the selection criteria that would be used. All the required skills must be certified; the ability to undertake the work is not enough.

A Director (SC) gave evidence that he contacted the claimant's foreman and asked that the claimant attend a meeting in his office on Friday morning. The claimant rang SC on Thursday evening and informed him that he would be out sick the following day and could not attend the meeting. SC told that claimant that he had to attend the meeting as he was being made redundant, the claimant stated that he could not be made redundant if he was on sick leave. A medical certificate was submitted to the respondent but they returned it to the claimant with his P45. The claimant said he had had a workplace accident; this is the first time the respondent had heard about an alleged accident. The alleged accident was not investigated, as it had not been reported. SC had no prior discussions with the claimant before that phone call.

The claimant's representative requested an appeal of the decision to make the claimant redundant. At that meeting the representative was informed of the basis of the decision to select the claimant. The union representative requested that the company sign the sick certificate for social welfare. The respondent refused, as they had no knowledge of the claimant's illness.

Claimant's Case

The week prior to the claimant's redundancy he had an accident at work and hurt his back. The claimant did not report this accident as he thought he was ok and continued to work. Later in the week the claimant informed his foreman about the accident, as his back was getting worse. The claimant asked whether redundancies were coming up to which the foreman replied they were ok for another month. On Thursday the claimant, with the permission of his foreman, called his sister who is a nurse; she instructed him to see his GP about his back. The foreman informed the claimant that he had to go to the office the following morning. The claimant informed his foreman that he would be visiting his GP, he then instructed him to contact SC after he visited his GP that evening.

The claimant contacted SC that evening to say he would be out of work for 2 weeks due to the injury caused by the accident. SC stated that he did not know anything about the accident and to come to the office as was being made redundant. The respondent had not informed the claimant that business was quiet or that redundancies were on the cards or what selection criteria would be used. The appeal meeting of the 9th of June was the first time the claimant was informed of the selection criteria.

The claimant had all the skills required from the selection criteria but they were not certified. The claimant did not have a licence but could have got a lift to any emergency calls. The claimant was never offered any additional training.

The claimant does not believe that this was a genuine redundancy situation as there were sub-contractors on site doing the work and another staff member replaced the claimant's position. The claimant did not stay at the meeting of the 9th of June, as he believed the respondent was not being truthful; he only wanted his illness benefit signed so he could claim from the Construction Industry Federation illness benefit scheme.

Determination

Based on all the evidence adduced the Tribunal find that a genuine redundancy situation existed within the respondent but that the procedures used in effecting the redundancy were not fair. The respondent did not communicate why the claimant was being made redundant, did not give the claimant notice of a redundancy situation or notice that he was being made redundant.

The Tribunal find that the claim under the Unfair Dismissals Acts 1977 to 2007 succeeds and awards the claimant €11,000.00 in compensation. The redundancy lump sum amount of €9360.00 the claimant has received should be deducted from this award equating to a total award of €1,640.00.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)