

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

-claimant

CASE NO.
UD2405/2009

against

EMPLOYER
under

-respondent

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. Clancy

Members: Mr. G. Andrews
Ms H. Henry

heard this claim at Ennis on 14th June 2011

Representation:

Claimant: Crimmins, Howard Solicitors, Dolmen House, Shannon, Co. Clare

Respondent: Nicholas, Nolan Solicitors, Parnell House, 50-52 Parnell Street, Ennis, Co. Clare

Respondent's Case

The respondent started the company in 1986 manufacturing welded wire products. The company expanded and moved into making industrial furniture. The respondent secured a contract with a large computer company in 1996, as a result the company expanded further and the computer company became the respondent's main source of work. The large computer company announced they were closing their Irish plant and moving it to Poland. As a result of the computer company closing, the respondent put a notice up in the canteen warning that there would be redundancies.

A second source of the respondent's business was with an insulation company. The insulation company's business declined to the point that factory operations decreased to a three-day week. This had severe consequences for the respondent.

The claimant was employed as a specialist welder in 2001. Due to the decline in the business from the insulation company and the loss of business from the computer company the respondent made the decision to make all the welders redundant. The 1.5 days of welding work remaining could be completed by a member of staff who has been employed by the respondent since 1986. The respondent did not consider re-deployment or re-training the claimant, as there was no other work available within the respondent. The claimant was capable of completing other roles but there was no other work available.

This was the first time the respondent attempted to make the claimant redundant. The respondent

does not recall issuing the claimant with a redundancy calculation in 2008 but if he did, it would have been given to him for information. The respondent's selection criteria was based on retaining the people that could contribute to the survival of the company. The respondent and the claimant discussed the problems the claimant had with the respondent's son; this was not a consideration when selecting redundancies. The respondent felt that he could not do anything about the complaint the claimant made about his son. The respondent's Financial Controller signed the claimant's signature on the RP50 form in place of the claimant. The respondent did not speak to any of the employees regarding redundancy and did not explain the selection criteria used as all the welders were made redundant.

After 6-8 weeks the respondent re-hired one of the welders (J) who had been made redundant, as he was capable of a specialist type of welding required for a new contract the respondent secured. The company requested that (J) be retained for the contract. Another welder was also re-hired in July 2009.

The respondent MD's son gave evidence that in conjunction with his main role he and another member of staff did the welding when the claimant and the other welders were made redundant. The respondent MD's son took over as MD from November 2009; he was not involved in the decision to make the claimant redundant. The witness denied that any major incident occurred with the claimant that ultimately led to his redundancy. The two welders that were re-hired were persistently contacting the respondent inquiring if there was any work available post their redundancy.

Claimant's Case

The claimant made two complaints against the respondent MD's son as he had stopped talking to him and ignoring him in the workplace. The first complaint relates to the fact that the son sent someone else to train the claimant on a new clocking system when he had personally trained everyone else. The claimant made a second complaint to the MD regarding the manner in which the respondent MD's son spoke to him on one occasion, this was replied to with, 'what can I do, he's my son.' In June 2008 the respondent MD called the claimant to the office and informed him he was being made redundant, gave him a redundancy entitlement calculation and said he was on one month's notice. After the month had expired the financial controller asked the MD whether to process the redundancy paperwork, but instead the claimant was told that he was no longer being made redundant.

The claimant was capable of doing a lot of the roles within the respondent but his main job was welding work derived from the insulation company. The claimant queried who was going to do the welding now that all the welders were being made redundant to which the respondent replied that his son would be doing it. The claimant was aware that one of the welders (J) would be taken back on. The claimant was informed on Monday the 15th of June that he would be made redundant on Friday. The claimant had no prior notice that redundancy was a possibility; he did not see any notice in the canteen and he was very busy. The claimant had never seen or signed the RP50 form. The claimant accepts that his 'insulation' work slowed down but he had plenty of other work to do, he was always busy. The claimant was also an expert in the specialist welding that (J) was taken back to do. The claimant was aware that there was work available in the respondent but he did not contact them after his redundancy, as he said he knew he would not be taken back.

Determination

Having carefully listened to the evidence adduced by both parties the Tribunal is satisfied that the claimant was dismissed by reason of redundancy but find that fair procedures were not used in effecting the redundancy. The Tribunal find that the claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds and awards the claimant €32,000.00 in compensation. The redundancy payment already made of €8000.00 is to be deducted from this amount equating to a total award of €24,000.00.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)