

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE

-claimant

CASE NO.
UD628/2010
MN577/2010

against
EMPLOYER

-respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms J. McGovern B.L.

Members: Mr R. Murphy
Mr J. Flannery

heard this claim at Trim on 4th May 2011

Representation:

Claimant: Mr. Oisín Scollard B.L. instructed by Hughes & Liddy, Solicitors,
2 Upper Fitzwilliam Street, Dublin 2

Respondent: Ms Fiona Pekaar B.L. instructed by Seán Costello & Co, Solicitors,
Holiday House, 32 Arran Quay, Dublin 7

Respondent's Case

The Finance Director (SS) of the respondent gave evidence. The respondent is a logistics company. The company is segregated into import and export divisions; the claimant was a warehouse operative in one of the warehouses. In 2009 business was very tough with the respondent operating on tight margins. Monitoring the business situation was an ongoing process, which led to a number of cost cutting measures being implemented. In early 2009 an 8% pay cut across the company was agreed instead of redundancies. All the staff were informed of this at a meeting. In late November 2009 a comprehensive review was undertaken as the respondent had lost a contract worth €100,000. SS concluded that two redundancies from 'fixed costs' connected to the contract were required and informed the Operations Manager (NC) of this. It was NC's decision which roles would be made redundant. SS explored alternatives but none were viable or had already been implemented.

SS was made aware of an argument that occurred between the claimant and the operations manager. The decision and e-mail had been sent before SS was informed of the argument. SS believes LIFO is normally applied in effecting redundancies. SS was informed on the 27th of January that the claimant had been selected. SS spoke to the claimant twice in early February after he was made

redundant; the calls were abusive so he did not contact him after that.

The Operations Manager (NC) gave evidence that the claimant was a 'fixed cost' as was required by SS. Prior to the meeting discussing the planned wage cut the staff were given the opportunity to suggest any alternatives. By November/December 2009 business was very quiet. The respondent does not employ agency workers. NC selected the claimant for redundancy on Tuesday the 26th of January and informed the claimant on Wednesday the 27th of January.

Due to the nature of the business, if it was quiet on a Wednesday a staff member would be sent home but asked to return for a few hours on the following Saturday. The claimant was unwilling to work at weekends. The other staff members were annoyed that the claimant refused to work on Saturday and approached NC about the situation. NC attempted to speak to the claimant on the 25th of January regarding the situation but it escalated to an argument; NC did not shout or say 'we'll sort this out once and for all.' Disagreements were commonplace in the working environment and did not effect NC's decision to make the claimant redundant.

The claimant was selected from 'fixed costs' based on the policy of last in first out. NC called the claimant into his office and informed him that his role was being made redundant. The claimant asked if it was because of the argument and NC informed him he was selected using the LIFO policy. NC did not contact the claimant after this, as his behaviour had been 'uncalled' for.

Claimant's Case

The claimant was aware that business was decreasing within the respondent. As a result of the claimant refusing to work on a Saturday he was informed that, 'I'll make an example of you.' The following day the claimant was informed that he was being made redundant due to the respondent losing a contract. The claimant queried the selection criteria suggesting it was because of the argument.

The claimant gave evidence of loss and his attempts to mitigate his loss.

Determination

Having heard all the evidence adduced the Tribunal find that, although the claimant's selection for redundancy was fair the respondent used inappropriate procedures in effecting the redundancy. Consequently the Tribunal award the claimant €2,500.00 as compensation under the Unfair Dismissals Acts, 1977 to 2007.

There was no evidence adduced in relation to the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)