

## EMPLOYMENT APPEALS TRIBUNAL

**APPEALS OF:**

**CASE NO:**

EMPLOYEE

UD1252/2009

*- Claimant*

against

EMPLOYER

*- Respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. D. Herlihy

Members: Mr. J.J. Killian  
Ms. T. Kelly

heard this appeal in Limerick on 16 November 2010  
and 20 January 2011

#### **Representation:**

Appellant: Mr. Michael Deasy BL instructed by:  
McMahon O'Brien, Solicitors, Mount Kennett House, Henry Street,  
Limerick

Respondent: Mr. Ambrose Downey, IR/HR Executive, IBEC mid West,  
Gardner House, Charlotte Quay, Limerick

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

The Tribunal heard evidence from the HR manager (also known as TD). He explained that the respondent was a Builder and Timber provider. In 2004 the respondent had diversified into Timber engineering but that now ceased. They have eight branches in southern Ireland and four in the North of Ireland.

The claimant worked in the Limerick branch. The claimant was promoted to sales manager in 2007 and was sales manager up until his position was made redundant.

On or about February 2009 the chief executive (MmcM) and the witness informed the staff that there would to ensure jobs were retained. At some point in time the chief executive decided that there would be redundancies.

Redundancy was a last option for the respondent; before the redundancies they had implemented pay cuts and expense cuts.

The witness explained that he himself was not involved with the claimant's redundancy. The decision to make the claimant redundant was solely the decision of the claimant's branch manager (CON). He himself just supplied support service all of the branch managers. He did attend the meeting on 12th February 2009 at which the claimant was told that he was being made redundant. The claimant did not have a representative with him.

He met the claimant on 03<sup>rd</sup> march 2009. The claimant asked him who had decided that he was to be made redundant. He told the claimant that it was the branch manager who decided. He explained that certain criteria were used in the selection process and that the branch manager applied the criteria. He then told the claimant that he could appeal the decision to the financial director (SM). The claimant did decide to appeal the decision.

He then organised a venue for the appeal hearing and wrote to the claimant to advise him of the date and venue for the appeal. He himself attended the appeal for "clarification purposes". The claimant conveyed his concerns and allegations about a discussion between himself and the branch manager (CON). One of which was why he was selected over another "sales representative". The financial director told the claimant that he would have to revert back to him regarding the allegations

The witness explained that he did not contribute to the appeal hearing and there was no objection to his attending. The claimant did not have a representative at the appeal nor did he seek to have one.

The witness clarified that at the time of the claimant's redundancy there were 45 employees and four sales representatives and now there are two or three sales reps and twelve employees.

The Tribunal heard evidence from CON who was as described the branch manager of the branch the claimant was employed at. He explained that he decided that the claimant's position as sales manager was not needed. He also "judged" the claimant against another sales representative and made the decision. He was aware another representative was due to retire in July of that year and he decided that they would need two sales representatives.

The witness was asked if the claimant fulfilled the role of sales manager and he explained that the claimant was appointed as a sales manager and it was envisaged that he would fulfil the role however it did not transpire, "it did not happen as times changed", the claimant managed the hardwood stock and had also a strong merchant customer connections.

The witness further outlined the selection criteria that he applied. He outlined/described the claimant's work position and the other employees work positions. He told the Tribunal that he had to decide what skill-set (that an employee had) was required going into a recession. He explained, "The claimant had strong skills (regarding merchant selling) there was no comparison between the business

we were facing and the business we had left behind". He also explained "The only issue was that the claimant did not have skills experience on a spread of accounts, he had experience in certain accounts".

In cross-examination the witness agreed that no weight was given to the length of service of the claimant he further explained, "The main reason is that I identified what the company needed in the future"

The witness did not agree that the claimant was selected because of his salary.

On the **second** day of the hearing the Financial Director gave evidence. He gave evidence of the downturn in business for the respondent company from 2007. A decision was made to rationalise the company. Costs were cut, salaries decreased and some staff were to be made redundant. All staff roles were examined.

In the claimant's case his Branch Manager (CON) made the decision to make him redundant having made a list of selection criteria between him and another colleague. He stated that two other Sales Representatives were not considered for redundancy as one of them was to retire in 2009 and the other in 2010. The claimant was made redundant on February 12<sup>th</sup> 2009 and was informed he could appeal the decision to the witness.

The appeal was heard in the Southcourt hotel on March 13<sup>th</sup> 2009 and was attended by the witness, the HR Manager (TD) and the claimant. He opened the meeting and outlined the process and asked if he had any questions. The claimant raised issues concerning the fact his manager decided who was to be made redundant and not head office. The fact that although he had been promoted to Sales Manager he had never fully taken up the role. He also made reference to a conversation he had with CON when he was told CON's hands were tied and the reason he had been chosen to be made redundant was because of his high salary. He also stated that as so many staff were being made redundant it was a collective redundancy and no prior consultation had taken place. The witness said he would look into his concerns and get back to him. The meeting lasted about half an hour.

He spoke to both CON and TD with the claimant's issues raised at the appeal meeting. On March 20<sup>th</sup> 2009 he wrote to the claimant. He stated that it was not a collective redundancy, CON had applied the selection criteria and it had been his decision the claimant was chosen. He was also informed that the amount of his salary had not been a factor in his selection.

In cross-examination he stated that he had taken some time to consider the claimant's issues. When put to him that his position had been replaced by new staff, he stated that the number of Sales Representatives could possibly have increased. When put to him that the spreadsheet submitted on the first day of the hearing concerning the sales figures between the claimant and the other Sales Representative were incorrect as a staff member from the I.T. unit had made the error. A new spreadsheet of the Sales Rep Analysis Sales -v- Targets between the claimant and the other Sales Representatives. He stated that the new figures still showed the claimant's new sales total was less than half of that of his comparator. This was a big factor in his selection as acquiring new business was very important to the respondent company.

When asked he stated that it clearly stated in a copy of the claimant's contract the selection process used if he was to be made redundant. The original contract was not available to be viewed by the Tribunal.

### **Claimant's Case:**

The claimant gave evidence. He commenced employment as a Telesales Representative in 1998 with the respondent company. Over time he was promoted and in 1997 he was offered the position as Sales Manager, however, due to business constraints e never really fully took up the position but did take on more tasks in his role.

On February 11<sup>th</sup> 2009 he received a telephone call from CON asking what customers he would be dealing with the following day. He informed him who they were but was told that he had to attend a meeting with him the following day at 3.00 p.m. He told the Tribunal that he was not informed what the meeting was about but thought that maybe he had done something wrong.

The following day he met CON and was told he had bad news for him; he was to be made redundant. He was shocked, as he had no prior knowledge his job was in jeopardy. He was also told TD would speak to him about his redundancy package. The claimant left the premises for a period of time and later returned to meet TD. He went into the canteen and met CON. He asked were other Sales Representatives to be let go and was told no. He was told that he was being let go because of him position as Sales Manager. The claimant replied that he had never taken up the role. He was then informed that he was being let go because of the rate of his salary.

He later met TD, was told his sales figures were bad and was given an RP50 form to take away with him to later return to complete. He went to seek legal advice and later told TD he was not happy and was seeking legal advice. The following Monday he received a call from CON telling him the insurance on his company car was up that evening. CON spoke to the HR department and later got back to him informing him the car insurance was sorted.

On March 2<sup>nd</sup> 2009 he met TD in Scott's bar. He told TD he was not happy. TD informed him his comparator had better sales figures. The claimant told the Tribunal that he had years more service, experience and knowledge of products than his comparator. He was informed that he could appeal the decision to the Finance Director (SM) and told him to contact him.

He attended the appeals meeting and was handed a copy of the criteria used in the selection process and was informed this was used for his selection. He read the report but found it very vague. He noticed the report had been compiled on February 9<sup>th</sup> and he was informed of his redundancy three days later. He stated that he was 96% on target for his sales. He also stated that his comparator had moved from a sister company of the respondent and had brought his previous customers with him.

The claimant gave evidence as to his loss.

On cross-examination he stated he could not recall his contract as a Sales Manager. He stated that he had since asked for a copy of his contract but was refused. He agreed that staff knew that “things were tough” in 2007. Sales Representatives had been told to make sure they got paid from their customers as some of their customers were ceasing to trade. He agreed that acquiring new sales was important. He stated that he had not asked what criteria were used in the selection process.

**Determination:**

The Tribunal have carefully considered the sworn evidence and submissions stated by both parties in this case. The Tribunal finds that the respondent was procedurally unfair in this case and find in the claimant’s favour. Accordingly, the Tribunal awards the sum of € 8,000.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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