

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE

UD2519/2009

*claimant*

against

EMPLOYER

*respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms J. McGovern B.L.

Members: Mr M. Noone  
Mr T. Brady

heard this claim at Dublin on 3rd March 2011  
and 27th May 2011

Representation:

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Claimant(s): Mr. William Fawsitt BL instructed by Devaney & Partners, Solicitors,  
Main Street, Malahide, Co.Dublin

Respondent(s): Mr. Brendan Kirwan BL instructed by A & L Goodbody, Solicitors,  
IFSC, North Wall Quay, Dublin 1

The determination of the Tribunal was as follows:-

### **Respondent's Case**

NC told the Tribunal that she worked with the customer care division of the respondent. The company functioned independently and was owned by a US Company. The US Company acquired the company in 2006 and relocated to the UK. The respondent was involved in 11850 media and media sales business and it still advertised sales to small businesses. She was head of sales for four months with the company in Ireland.. Prior to that she was head of UK sales. The claimant was an accounts manager and sold products to new customers and to existing clients. He was based in East Point in the sales area. In February 2009 she was asked to oversee the company operation in Ireland. The respondent was not making its sales target, was overstaffed and had significant costs. Part of the administration function was undertaken in the UK. She compiled a proposal for a redundancy plan, as she was manager of the operation in Ireland and was asked to do

so by the CEO, HR manager and HR. Seven were employed in sales and the respondent wanted to reduce it to two. She had to look at strategic costs as well as SMS. She was involved in the UK redundancy programme and approximately one hundred employees were made redundant.

DB was in HR at the time that the proposal was discussed. A number of employees had a thirty-day consultative period. The claimant's role was to increase sales with existing customers and to bring new business to the respondent. The key areas were to target high value accounts to ensure that sales were being maximised. The respondent targeted larger clients and that was a long-term process. Redundancies were announced on the 16th April 2009 and the claimant was present.

Five employees applied for the position of national account manager. She along with AR compiled the questions and this document was used for all applicants. She was chosen to interview the applicants as she managed the team. The selection criterion was based on review performance. The scoring system was the standard used in the respondent and the rating was from 1 to 8. Scores were based on the competencies demonstrated and a consistent scoring structure was used. The candidates were rated directly after the interviews. The claimant did not raise any issues regarding the interview.

In the general scoring the claimant received a rating of 3 out of 10. Most of the claimant's answers were very general and no explanation was given. He had no awareness of what the role entailed. A number of structures that the respondent had in place did not come through in the claimant's answers. The interview took one hour. After the interview the claimant asked HR for a copy of the scores. The witness and AR, HR felt it better that they meet the claimant and allow him the opportunity to ask questions. She invited the claimant to attend a conference call on 21<sup>st</sup> May but he declined. He told her he did not want to deal with this over the telephone.

She instructed AR, HR to send out letters. She heard the claimant's grievance on 23<sup>rd</sup> March 2009. The claimant raised new issues and they had to have a continuation of the first meeting. DP, one of the sales employees attended as a witness for the claimant. The meeting on the 21<sup>st</sup> April 2009 was a continuation of the first grievance that the claimant had. The claimant was notified of his right to appeal. She did not attend the appeal meeting.

In cross-examination she stated that she came to Ireland to establish how performance could be improved. She formulated part of the redundancy plan in conjunction with the HR manager. The claimant had raised concerns with other employees, as he was very unhappy with the outcome of the interview. Some of the claimant's claim was well founded. The claimant's commission was not paid, as he had not reached his targets. She could not recall if he had reached any of his targets. The top salesperson reached a target of 83% and the claimant reached 70%. The difference between the job the claimant undertook and the job on offer was that it covered a greater geographical area and was a portfolio manager. She was the claimant's line manager for four to six weeks. She knew the claimant had a complaint and she dealt with it when she came to Ireland.

The criteria used in selection was performance, absence and interview, no other criteria was used. The two new roles were broadly new roles. She had received training in interview skills and she had knowledge relevant to HR skills. She was working with the respondent a month when she devised the plan. She interviewed the claimant and he went through a fair and objective process the same as everyone else. She agreed that she made the claimant redundant. When asked if she contacted the claimant regarding an advertisement placed by the respondent in October 2009 she replied no

LB told the Tribunal she was head of HR in Europe and was in the role for two and a half years. She had no dealings with the claimant and had no involvement in the redundancy process. The head of HR Ireland asked her to become involved in the grievance that the claimant had. She investigated the claimant's grievance on 23<sup>rd</sup> June 2009. Present at the meeting were the witness, ME who was an internal client at the time, EC from HR the claimant and a witness on behalf of the claimant DP. The meeting was about non-payment of commission and the meeting followed the format of the grievance submitted. Commission targets were not given. One commission was paid late and one levy was missed out on. At the end of the meeting the issue of the redundancy process was raised. She set up a meeting with the people that the claimant needed to talk to and she gathered information. She was not aware of the background and all the respondent could do was look at the process and satisfy itself that the process was fair and just. She thought it was a robust process and interview.

In cross-examination she stated that she was with the respondent six months when the process took place. NC was always responsible for media in the UK and she was not in charge of Ireland now. She was not aware of the number of employees in Ireland. NC was the most appropriate person to determine who should be made redundant and she was in the media business for a long time.

### **Claimant's Case**

The claimant told the Tribunal that he commenced employment with the respondent in 2007 as a business manager and out of twenty sales representatives he was the best performer. After three months he was promoted to the position of key accounts development manager. As a key accounts development manager he looked for new business, he was responsible for renewals and looked after existing accounts. He had problems with the jobs due to the non-disclosure of targets by the respondent. He first raised these difficulties after three to four months in the role and the respondent told him to keep working. His first line manager was SD. NC came from the UK to sort out the situation in Ireland. Prior to coming to Ireland she implemented redundancies in the UK. After a month NC decided to let people go.

NC heard his grievance hearing regarding his targets and commission on 23<sup>rd</sup> March 2009. He was given twenty-four hours in which to compile information which he did. NC failed to interview his line manager SD. He provided the figures and they were manipulated. NC was very abrupt at the grievance meeting on 16<sup>th</sup> April 2009 and she did not want to take account of the evidence that he gave. He did not like her, she was very unprofessional and he felt it was not a thorough investigation.

The position of national account manager was exactly the same job as he had undertaken the previous year. NC was on the interview panel for this position and EK took notes. NC maintained that he had no knowledge of the role and that he was not able to provide examples. He was sales manager and in charge of sixty employees. He e-mailed her to look for information. NC claimed that she had a specific line of questions and that he did not seem to have knowledge or understanding of the position and that is not what occurred at the interview. He gave examples at the interview and he felt he did an excellent interview and elaborated on all his answers. At the interview he did not have issues with NC, he felt she was friendly and professional. What was reflected in writing was not what happened on the day of the interview and he was good at his job. In his new role as a key accounts manager he obtained an award.

He was not dismissed. He was told to return his laptop and he was refused personal information.

He has sought alternative employment but to date has not been successful.

In cross-examination he stated that he attended a meeting on the 16<sup>th</sup> April 2009 and he was informed that there were going to be some changes. Two positions of national account manager were on offer and he was given a description of this role. He did not object to NC or EK at the interview on the 29<sup>th</sup> April 2009. He accepted that he was given every opportunity to answer the questions that he was asked and he agreed that the interview was structured. Prior to the interview he stated that he objected to NC conducting the interview. He then stated that he did not object to NC being on the interview board. He found it very unprofessional that NC was the interviewer and he raised these matters with HOF and HR in the UK. There was a lack of professionalism in dealing with his issues. He thought as part of the grievance procedure that he raised this issue with the respondent in June 2009.

He made a written request for his scores after the interview. He was offered verbal feedback and he received written feedback from the respondent. He could not recall if he sent one or two e-mails to the respondent to indicate that he was very unhappy with his interview scores. He did not know if he had these e-mails. He contacted NC by telephone for clarification about what occurred at the interview on the 29<sup>th</sup> April 2009. He agreed that he received feedback in writing. He contacted the respondent regarding the feedback on the interview documents but he did not put it in writing.

When asked if he raised the fact that NC was dealing with his grievance and was on the interview panel on the 23<sup>rd</sup> June 2009 he replied that he could not recall the date.

### **Determination**

The claimant was not unfairly selected for redundancy. There was an appropriate mechanism in place to identify the most suitable candidate for the two available positions. Extensive evidence was given in relation to a grievance procedure but it had no bearing on his situation. The claimant was not dismissed on foot of the grievance procedure instead he was selected for redundancy. The respondent adhered to fair procedures. The claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

(CHAIRMAN)

