

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE – *claimant*
against

UD1937/2009

EMPLOYER – *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. J. Revington SC

Members: Mr. C. Lucey
Mr. S. O'Donnell

heard this claim at Dublin on 18th November 2010 and 4th July 2011

Representation:

Claimant: Mr. Ross Maguire SC instructed by Mr. Walter Hegarty Solicitor,
17 Clarendon Street, Derry BT48 7EL, Northern Ireland

Respondent: Mr. Michael Mulcahy SC instructed by Mr. Karl Hutchinson of Law Plus
Clifford Sullivan & Co. Carlisle House, Adelaide Road, Bray, Co. Wicklow

The decision of the Tribunal was as follows:

Respondent's Case

The director gave evidence. The respondent is an accountancy firm. Since 2004 it has concentrated on two areas of work. They provide outsourced accountancy services and act as financial controllers for small enterprises. Their second area of work is in doing finance related projects for large organisations.

The project work was growing during 2007 and the decision was made to recruit a project accountant. The claimant was recruited. His contract did not say ‘project accountant’ but his experience with Sarbanes Oxley legislation suited him to project work. After a week in the firm’s office he went to work on a project in the office of a client. For a period of six weeks between projects the claimant did some work in the outsourced accounting area. Feedback from the team head said that there were problems with the claimant’s work and his attitude. The director was not concerned because the claimant was lined up for another project.

In September 2007 the firm employed 12 people; the 3 directors; 2 qualified accountants; 3 part-qualified accountants and 4 support staff.

In late March 2009 the government embargo on consultants in the public service resulted in the claimant's then project ending. Due to the recession companies were not willing to spend money on outside consultants. The pipeline dried up. They tried unsuccessfully to locate other project work for the claimant. There was no choice but to make the project accountant role redundant. The director had received an email from the firm's partner on 27 April 2009 describing the claimant as 'quite weak and a lot of gaps' and proposing to let him go because there was no project work. An ex gratia payment of €5,000 was made to the claimant.

Earlier in the year the outsourced accountancy service was growing. The team head could not do all the work and it was decided to recruit an accountant for this area. The claimant was fully employed on projects and was not considered for this position. The person employed has the skill set needed for the position.

A retired accountant gave evidence. He had worked as a consultant for many years. In his view the accountant recruited to do outsourced accountancy work seemed to have broader skills than the claimant.

The recruitment professional gave evidence. In the summer of 07 the firm's partner approached him to find an accountant to do project work. In mid 07 it was difficult to recruit accountants. The recruitment professional sold the position to the claimant as project job in a bijoux accountancy firm. Once the claimant was appointed he had no further involvement with him.

The partner gave evidence. He and the director decided to get rid of audit work. This work is dull and run of the mill and they wanted to do something different. The firm does outsourced accountancy services and project work. The project work involves going into a large company to sort out a problem. The director did some project work but he does not have the mindset required to do this work. A project director was recruited to do that work.

In the summer of 07 the outsourced accountancy services was the major earner. However they were turning down projects in organisations that they wanted to work with. They needed to recruit a project accountant. The partner contacted the recruitment professional. He interviewed the claimant and later the director interviewed the claimant. The claimant was one of 4 or 5 candidates for the post. The claimant had the skills the firm wanted. It was clear to the claimant that he would fill a project accountant role. The claimant worked on a number of projects.

The claimant met with the partner in August 08 to discuss his future. The claimant was working on a project at that time. On 21st October the claimant and the partner met for a review. The claimant was a permanent member of staff and he was still working on a project. There was an expectation of more projects. They would look at options to keep him on the staff.

Project work was becoming difficult by the end of 08. But they were confident they could retain the role of project accountant. In the spring of 09 the project work came to an end. This was utterly unforeseen. The claimant returned to the office, where he was working on outsourced accounting. However the team leader felt that the claimant was not providing benefit to the team despite his accountancy experience. The partner could see no indication of any projects coming down the line. They had to make a commercial decision and the claimant was made redundant.

The partner has concerns about gaps in the claimant's knowledge. In retrospect it may have been appropriate for the partner to discuss his concerns with the claimant but he did not. The partner was adamant that there had been no intention to manufacture the claimant's redundancy. In the partner's view the outsourced accountancy services was different work from project work. The team leader had done some project work but was more suited to outsourced accountancy services and so he came back into the office.

The team leader gave evidence. He joined the firm as an accountant. He did for a time go out to clients to do audit preparation. When the claimant joined the firm he was introduced to the team leader as a new member of the team who would work on projects.

When he was between projects and back in the office the team leader gave the claimant the task of preparing a client's accounts for audit. The team leader first observed the claimant's attitude. The claimant complained about the auditors. The team leader took the view that the firm was being paid by the client to do the work and so he had to manage the claimant's attitude. Later the financial statements prepared by the claimant for the auditors were returned to the team leader. The job had not been done to the standard expected by the team leader therefore team leader had redo the financial statements. Based on this experience the team leader felt that the claimant was not up to the job of working in outsourced financial services.

Claimant's Case

The claimant gave evidence. He joined the firm in September 07 as a senior accountant. At his own request he was initially given a one-year contract. In September 08 his contract continued and he became a permanent employee. The recruitment professional put him in touch with the firm. He was first interviewed by the partner and a week later he met with the director. Projects would be a significant part of the role.

In August 08 he met the partner. The project the claimant was working on had been extended but he was concerned about the end of the project. The partner told him that there would always be a role for him back at the office. In October 08 the claimant again met the partner. The partner told him there was a role for him in the office. The partner did not want the claimant to stagnate on projects. At that time the partner said there was plenty of work.

The claimant said that he was aware of an auditor's role. The claimant voiced his opinion to the team leader. The claimant was unaware of the team leader's concerns about his attitude or knowledge until he heard the evidence.

The claimant felt that he could do the work involved in outsourced financial services. On one project he worked on he spent more than 3 months doing outsourced financial services for the client company.

On 1st May 09 the director called the claimant to a meeting. The director told the claimant that he had tried to source other projects to no avail. The claimant was being paid more than any other employee. The claimant was made redundant.

The claimant agreed that he had been recruited to do project work. However over time the dynamic changed. Without the assurances of the partner the claimant would have started looking for another position sooner. The claimant felt that the appointment of an assistant to the team leader made his

role more secure. There was plenty of work. Later he felt that the partner saw an end to the project work and replaced the claimant with a cheaper option.

Determination

The Tribunal carefully considered the evidence adduced in this case. The Tribunal is not satisfied that any or adequate procedures were in place in the respondent firm. The Tribunal is surprised that an accountant was recruited for the outsourced financial services section without the claimant's knowledge. Also the claimant was never put on notice that his position was at risk of redundancy and neither was he given the opportunity to make representations prior to his dismissal. Taking all the evidence into account the Tribunal finds that the claimant was unfairly dismissed. The claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds.

Under the circumstances; the claimant had been employed by the respondent for less than 2 years, the claimant's home was a significant distance from his workplace and the email from the claimant to his employer dated 29 July 2008 in which he stated that he did not wish to leave until he had found something suitable, the Tribunal awards the claimant €20,000.00 in addition to the ex gratia payment.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)