

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE – *appellant*

UD867/2010

against the recommendation of the Rights Commissioner in the case of:

EMPLOYER – *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. O. Madden BL

Members: Mr. D. Moore
Mr. J. Dorney

heard this appeal in Dublin on 23rd August 2011

Representation:

Appellant: Mr Arthur Kelly, 18 Shantalla Drive, Beaumont, Dublin 9

Respondent: Mr. Aaron Shearer BL instructed by Ms Aoife McGuinness, McDonough & Breen, Solicitors, Distillery House, Distillery Lane, Dundalk, Co. Louth

The determination of the Tribunal was as follows:-

This case came before the Tribunal by way of an appellant appealing the decision of a Rights Commissioner ref: r-078482.ud-09/RG

Respondent's case:

Mr. CC told the Tribunal he had been the auditor for the respondent for the past 15 years. In 2007, the respondent's turnover was €13,300,000 and it is estimated it will be €4,000,000 in 2011. The respondent made losses of €400,000 in 2007 and €200,000 in 2008. As the auditor

he advised the respondent to bring in line the three areas of control he had over his business i.e. reduction of stock, reduction of debtors and reduction of wages. In 2007 the respondent had 45 employees which were reduced to 32 in 2008 and 28 in 2009. The respondent currently has 18 employees. The respondent asked him to attend the meeting with the appellant as the respondent was not comfortable giving the bad news to staff.

Mr. MB told the Tribunal that he opened the business with his wife in 1987. He said that the appellant was a very valuable employee and was very good with the customers. Mr. NL took redundancy in 2005 and agreed to stay with the respondent until he moved to the new premises. NL had experience in FIAT warranty work and one third of the business could be warranty work. NL was in his sixties and told the respondent that he would need to get someone to look after the warranty work on the KIA models. In 2008, due to the downturn in the economy, a lot of decisions were coming at him. The respondent looked at every department for cost savings and felt that the appellant would be able to do the KIA warranty work. However he was told by CL the service manager that it would not be a good fit. The appellant was made redundant and JB was employed to take on part of the appellant's role and the KIA warranty work. JB didn't work out and was let go after six months. CL is now doing the role.

CL started working for the respondent in 2002 and became service manager in 2007. He said that warranty work was not a simple operation. The vehicles belong to the customer and not the respondent. The respondent is audited by the manufacturer and if the warranty work is not done correctly they would not be paid or could lose the dealership. He sent the appellant on a KIA course called service advisor procedure and product knowledge. This was the first step in seven required by KIA for warranty work. Following this he advised MB that the appellant could not fulfil the function. He knew JB had experience in warranty work with Nissan and told MB. MB was employed to do the warranty work and that didn't work out.

Appellant's case:

He was working as a mechanic for the respondent. MB's wife told him he was great with the customers and asked him to help G on the reception desk. G moved upstairs and he stayed working on reception. On the 24th November 2008, he was asked to go to a meeting. MB and CC were there and they offered him a seat. MB said he hated doing this. CC took over and outlined how the respondent had to make him redundant and told him he was being given a month's notice. He was told CL would take over the reception duties. He worked the month's notice and said good bye to his colleagues. On the day he was leaving MB told him that if business picks up, he would get him back part time.

After Christmas, he met a friend who asked him who the new fella was working for the respondent. He booked his wife's car in for a service and met JB at reception who he knew from telephone conversations. He observed JB doing the duties he had done.

KF is the appellant's son in law. He went to the respondent to get parts and while there for twenty minutes noticed JB doing the work the appellant used to do.

Determination:

Having considered the evidence adduced the Tribunal makes a determination to the like effect as the Rights Commissioner's decision r-078482.ud-09/RG and awards €5000.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)