

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:

CASE NO.  
UD169/2010

EMPLOYEE

against

EMPLOYER

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. O'Leary BL

Members: Mr. B. Kealy  
Mr N. Dowling

heard this claim in Dublin on 19 April 2011

Representation:

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Claimant(s):

Mr. Oisín Scollard BL instructed by  
Hughes & Liddy, Solicitors,  
2 Upper Fitzwilliam Street, Dublin 2

Respondent(s):

Mr. Aaron Shearer BL instructed by  
Eugene F Collins, Solicitors,  
Temple Chambers, 3 Burlington Road, Dublin 4

The determination of the Tribunal was as follows:-

The claim

The claimant, a warehouse manager, commenced employment with the respondent in January 2007. He was informed on 16 June 2009 that his job was to be redundant. To avoid redundancy his options were: to accept a new job with a different title (but exactly the same terms and conditions) with a substantial reduction in salary; or be made redundant.

In a compromise the claimant said that he would remain in his current position and forego his

contracted 10% bonus and take an additional 9% wage reduction. This was not acceptable to his employer. His employer asked him to sign a compromise agreement and said that, if he did not sign the compromise agreement, he would not receive an enhanced payment. He signed the agreement under duress but he inserted a statement to the effect "I am signing this without prejudice that this is not a genuine redundancy."

It was claimed that it was clear that the claimant's employers wished to impose pay cuts and, rather than discuss any options that the claimant put to them, they contrived to make the claimant's position redundant notwithstanding that the position was never redundant and that the claimant's job was viable at all times.

#### The defence

It was contended on behalf of the respondent that the claimant's employment was lawfully terminated by reason of the redundancy of his position. An alternative role was discussed with the claimant but rejected by him.

It was denied that the claimant had a contractual entitlement to a 10% bonus and it was argued that the details in the claim form concerning the claimant's earnings were incorrect.

The claimant's position was redundant and he had not been replaced. Neither, in fact had any person been appointed to the alternative role discussed. The relevant tasks were being fulfilled by existing staff.

Alternatives to redundancy were fully explored with the claimant prior to his signing an agreement acknowledging and agreeing that an enhanced redundancy payment was accepted by him in full settlement of a claim under, inter alia, the Unfair Dismissals Acts, 1977 to 2007.

The respondent reserved the right to adduce further evidence at the hearing.

#### The hearing

Giving sworn testimony, a human resources manager (hereafter referred to as HRJ) stated that the respondent had been taken over by a multi-national (hereafter referred to as MNHN). The respondent was a supplier to the construction industry. Turnover halved in 2008. Headcount had to drop. The respondent looked for redundancies and looked at the claimant's warehouse manager salary of €42k. The claimant's staff more than halved. The claimant approached the respondent and sought a four-day week. The respondent could not grant this. Others might want it and the respondent wanted to keep operating a full week. The respondent told the claimant that it could keep on as a warehouse supervisor. The salary would go to €35k. After asking for a job description for the new post the claimant felt that the job would be the same although the claimant's line manager (hereafter referred to as JALM) would take some tasks.

However, the claimant did not want to take the supervisor job. He was given time to think but he felt that he would be performing the same role. HRJ took a contrary view on the grounds that there had been a big change in warehouse business. The respondent could not get approval to retain a warehouse manager on €42k. €32k was the best that the respondent could offer. The claimant did not accept and he got statutory redundancy together with an ex gratia amount and pay in lieu

fnotice. The ex gratia amount was given on the basis of a “form of acceptance” being signed by the claimant. However, along with signing the said form, the claimant wrote on it: “I am signing this without prejudice that this is not a genuine(sic) redundancy.”

The post had not been given. There were now four warehouse operatives (down from about a dozen previously) who were not being managed specifically by a manager or supervisor. JALM had been assigned to other work abroad.

Giving sworn testimony, the claimant said that he had worked in warehousing but that his first job as a warehouse manager had been with the respondent. He hit his targets and brought in some warehousing innovations. He felt that the respondent’s managing director (hereafter referred to as EMD) had thought highly of him. HNMN, the respondent’s parent company, was one of the world’s top companies.

Regarding the fall in the respondent’s turnover, the claimant was asked at the hearing about alternatives to the redundancy of his warehouse manager position. He replied that he had offered to work a four-day week for €35k and to forego his (8-10%) bonus. He offered the respondent back his 3% April increase. He was looking at all scenarios and asked JALM if he could think of anything.

The claimant told the Tribunal that he had been prepared to do additional duties, had “looked after the lads” and had done a health-and-safety report every week. He did loads and managed. He had “wanted to make a name there”. He did not deny that the number of men under his management had fallen from about a dozen to a handful. However, he had been told by the respondent that there was bad news (i.e. that he was being made redundant) and, within ten seconds, he was offered the supervisor post. No alternatives were put to him. He had said that he wanted to go home. He discussed it with his wife (who only worked part-time).

The claimant asked the respondent what duties he would not be doing if he became supervisor rather than manager. HRJ said nothing. The claimant asked for the job description and got it from JALM. He “gave three or four different scenarios” to the respondent but “nothing different was said” to him to contrast the manager and supervisor posts. He would just be managing less people. He “got no change” from JALM whom he thought should fight his case.

EMD agreed that the claimant’s post (whether manager or supervisor) would be the same. They offered €32k (per annum) and came back with €33.5k. The claimant wanted €39k or €40k. No other role (apart from that of warehouse supervisor) was offered to him. He told the respondent that he could not accept the same job that he was already doing at less money.

The claimant signed the respondent’s form of acceptance without prejudice. He got that advice on different sites. For three or four days he could not get advice from MNHN in Britain. He had three children. He was told on the phone that not signing off on the form of acceptance could hold up his redundancy. He got the payment which was without prejudice.

After his employment with the respondent the claimant did not get work again for six months but he believed that the respondent had wanted to pay less for the same job and had disguised the situation. Regarding efforts to mitigate his financial loss, the claimant gave the Tribunal testimony as to all employment (and earnings) he had managed to obtain since his employment with the

respondent.

**Determination:**

Having received documentation and heard testimony, the Tribunal was not satisfied that the respondent went through adequate procedures to make sufficient efforts to explore alternatives that might have avoided the claimant drawing the conclusion that he had no choice but to do his existing job for much less money or accept redundancy.

The Tribunal determines that the claimant was unfairly dismissed in all the circumstances and the appropriate remedy is compensation and awards the claimant the sum of €25,000.00 under the Unfair Dismissals Acts 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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