

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
EMPLOYEE

*-claimant*

CASE NO.  
UD234/2010

against

EMPLOYER *-respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy S C

Members: Mr C. Lucey  
Mr F. Keoghan

heard this claim at Dublin on 20th June 2011

#### Representation:

Claimant: In person

Respondent: Mr. Woods Solicitor of Sean Gallagher & Company,  
Solicitors, Grand Canal House, 1 Upper Grand Canal Street, Dublin 4

#### **Background:**

The respondent in this case is a catering company with customer at the “higher end” of the market. The claimant commenced working for the respondent on 06<sup>th</sup> November 2006 as a warehouse manager.

The claimant contended that having returned from annual leave on 30<sup>th</sup> September 2009 he discovered that some duties had been given to the purchasing manager (Mr.S). On Monday 05<sup>th</sup> October the MD (Mr. O’D) called him to a meeting. He was informed that his position had become redundant because of a re-organisation of the company. He was told that there was not enough work for him and that his assistant would be taking over some of his duties.

He was not offered any alternative employment within the company, nor was he asked to take a reduction in salary. At the time of his leaving there were other positions advertised. The respondent told the Tribunal that the positions that were advertised were as a C1 driver (which was different work) and the other was as a function manager and the claimant was not experienced or qualified to work as a function manager.

The company director gave extensive evidence as to the structure and history of the company. He explained the economic situation of the company and the redundancies that were effected.

The claimant position was that the purchasing manager’s job was created in 2009 and that he commenced working for the respondent in 2005.

The respondent disagreed with the claimant’s assertion that he controlled goods in and out before to

the role of purchasing manager was created.

The claimant did not believe that any procedure was followed.

**Determination:**

Where an employee signs an RP 50 form of receipt that is a prima facie indication that he or she accepts a redundancy situation exists, but this is not conclusive. There were changing realities in the business: Some employees left the business and were not replaced. In some areas of the business more employees left than the employer wanted to leave, as they needed a certain amount of employees in some areas. The claimant's functions were gradually eroded and "withered away".

The employer appointed a Mr S as overall purchasing manager rather than having the purchasing divided among many managers. Therefore the purchasing function was subtracted from the claimant's work. The supervisor that had reported to the claimant reported to another person. The transport functions went to the operations/beverage manager. Therefore the claimant's functions as warehouse manager ceased or diminished and there was a redundancy within the meaning of the Act.

The claimant did not make a case for unfair selection for redundancy. The Tribunal did, however, consider this matter and finds that section 6 (3) does not apply and he was not unfairly selected.

The Tribunal also considered section 5 of the Act of 1993:

5. —Section 6 of the Principal Act is hereby amended by

“(7) Without prejudice to the generality of subsection (1) of this section, in determining if a dismissal is an unfair dismissal, regard may be had, if the rights commissioner, the Tribunal or the Circuit Court, as the case may be, considers it appropriate to do so—

(a) to the reasonableness or otherwise of the conduct (whether by act or omission) of the employer in relation to the dismissal, and

(b) to the extent (if any) of the compliance or failure to comply by the employer, in relation to the employee, with the procedure referred to in [section 14](#) (1) of this Act or with the provisions of any code of practice referred to in paragraph (d) (inserted by the *Unfair Dismissals (Amendment) Act, 1993*) of [section 7](#) (2) of this Act.”

The Tribunal finds that the employer handled the redundancy badly and unreasonably. As the respondent has shown a “substantial ground justifying dismissal” (namely redundancy) under section 6 of the Principal Act and the dismissal is deemed to be unfair only by virtue of the amending subsection quoted above, an award of compensation for full financial loss would not be “just and equitable having regard to all the circumstances” under section 7 (c). A modest amount would be more appropriate and the Tribunal awards compensation in the sum of €2,500.00.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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