

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYER

UD1806/2010

against

the recommendation of the Rights Commissioner in the case of:

EMPLOYEE

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath

Members: Mr. D. Winston
Mr. S. O'Donnell

heard this appeal at Dublin on 1st April 2011

Representation:

Appellant :

Mr. Tim O'Connell, IBEC, Confederation House, 84/86 Lower
Baggot Street, Dublin 2

Respondent :

Mr. Blazej Nowak, Polish Consultancy Enterprise, 107 Amiens
Street, Dublin 1

This case came before the Tribunal by way of an employer appeal of a Rights Commissioner recommendation under the Unfair Dismissals Acts, 1997 to 2007, reference r-086952-te-08/DI.

Respondent's Case

The MD of the respondent company outlined the decline in business in the year or two preceding October 2009. In January 2009 a number of transatlantic carriers reduced flights, which led to a further downturn in business. The company did not have the work to continue employing the claimant.

Under cross examination the MD stated that the selection policy is based on suitability for the work

in question. There is a huge degree of flexibility within the workforce. The ability to transfer when required along with cross-functional skilling is important. Employees are required to work in different parts of the business. It was put to the MD that the claimant had worked in three departments and was clearly capable of doing various jobs.

In reply to questions from the Tribunal, the MD stated that there were about eight departments. A further three redundancies had taken place at the end of 2010.

The Production and Purchase Manager gave evidence stating that he had worked with the claimant for three months in 2009. He said that the company had to look at the amount of staff reductions across the board. He said the reason that the claimant was let go was because of the need to reduce staff in that area and other areas. Some employees had hours reduced from 39hrs to 29hrs. The Manager said that in the three months he worked with the claimant he noticed that the claimant was out sick five times. The company would also look at performance.

Under cross examination the Manager confirmed that he knew the claimant had worked in different departments. The Manager stated that he made the decision based on skill and fairness. When it was put to the Manager that the claimant will state that another employee was put in his place, he stated that the employee was multi-skilled with flexibility and dish washing skills. The Manager made the decision around September.

The Manager confirmed to the Tribunal that two employees were made redundant in his department and another six were put on part time work. When asked did he enquire about the claimant's previous work and skills in other areas, he confirmed he did not. He said a matrix is completed. This was not available to the Tribunal on the day of hearing. The claimant was competing with six or seven other employees. The Manager said that he had a meeting with the claimant prior to the letter which was issued a week before termination of contract.

The Payroll/ HR Manager gave evidence explaining "multi-tasking" within the company. She said that staff can work from one department to another. When the claimant started with the company he started packing in the kitchen. Then he was transferred to Porters department because he had a problem getting to work by 8am. It was a later start in the new department. One of the other employees who was kept was a multi-tasker. He could work any shift and was with the company since 2005. The witness stated that a lot is considered with the matrix system eg attendance, time keeping, multi-tasking ability.

Under cross-examination the witness stated that she did not recall the claimant ever having a 6am start.

Claimant's Case

The claimant stated in evidence that he was employed as a kit packer in April 2007. He worked in the warehouse putting mugs, forks, tea and sugar into packs. He worked in the warehouse until the end of 2007. He then worked in the main unit as a dishwasher. He was transferred in May/June 2008 because his supervisor suggested he could transfer as a porter. The claimant believed this was a good transfer. He received two written warnings. The first warning was received in September 2007 and the second warning was in June/July 2008. Both warnings were as a result of being late for work. His last fixed term contract was 15th September 2009. There was no discussion in relation to being made redundant. His contract was due to expire in November 2009. He said he was informed a week before the contract was due for renewal that it would not be extended. He

was not given a chance to respond and was told not to expect redundancy. The claimant is not working and has applied for jobs through agencies, Fas and other work applications. Evidence of various applications was handed to the Tribunal.

Under cross-examination the claimant denied that he requested the move to dishwasher. He worked without a contract for one year. He confirmed that he had a problem with time keeping and wanted to improve. When the claimant heard gossip about being let go he asked the Manager about his job and was given a letter to say his contract was not being extended. He did not protest or raise a grievance, as he did not think he could do anything.

When asked by the Tribunal whether there was any talk about redundancies in the weeks prior to termination, the claimant stated that usually every year there would be conversations among employees about fixed term contracts coming to an end. He had no knowledge of others being made redundant. Two Porters from his department had resigned.

Determination

The Tribunal has carefully considered the evidence adduced. The company makes the case that a genuine redundancy situation existed and that as the claimant had the requisite two year period service, the company has indicated a willingness to make the appropriate redundancy payment.

The claimant makes the case that he was unfairly and unreasonably selected for redundancy. The claimant was on a basic salary of €360 per week gross.

The company outlined the difficulties that it had been experiencing in the year or two preceding October 2009. There can be no doubt that the unions and indeed the workforce were being informed and updated on the company status as is desirable in the interests of good communication between employers and their workforce.

The claimant's position came under scrutiny in September 2009 and his position, skillset, flexibility and record, together with those of up to 5 other colleagues were considered in the usual way. It is an unfortunate fact of good management that hard decisions must be made. The Tribunal cannot find that the selection of the claimant for redundancy was unreasonable and therefore the appeal against the recommendation of Unfair Dismissal must succeed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

