

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

EMPLOYER
- *Appellant*

CASE NO.
UD493/2010

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

EMPLOYEE - *Respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. Hurley

Members: Mr. W. O'Carroll
Ms H. Murphy

heard this appeal at Galway on 25th August 2011

Representation:

Appellant: Lewis C Doyle, Solicitors, Augustine Court, St Augustine
Street, Galway

Respondent: Mr John Carty, Mandate Trade Union, Divisional Organiser,
Mandate Trade Union, Mary Street, Galway

These cases came before the Tribunal by way of an employer appeal against recommendations of a Rights Commissioner under the Unfair Dismissals Acts, 1977 to 2007, reference: r-080226-ud-09.

Hereinafter the employer shall be known as the appellant and the employee as respondent.

Appellant's (employer) Case

The employer company is a chain of supermarkets. A new premises was built to replace an existing store and it opened in February 2008. The employer never achieved the numbers that was expected and by July 2008 it was obvious that the business was suffering. A range of cost cutting measures were undertaken. Temporary positions were eliminated, rent reviews took place and a 10% pay-cut was introduced for employees earning over 30k. Employees were aware of the difficulties and business continued to deteriorate. The question of redundancy had never occurred previously for

the company and therefore no formal policies and procedures were in place.

Under cross examination JG, the owner of the company stated that two positions had to be made redundant. He relied on his managing director SG to deal with the issue fairly; he trusted him and relied on his judgement. A skills matrix was used to identify the redundancies.

JG had a vague recollection of letters from the Trade Union with regard to the employee but did not engage with them as the company did not recognise trade unions.

The General Manager (MB) of the store in his evidence stated that staff earning over 30k were advised of a pay cuts of 10% in July/August 2008, in order to reduce costs. By November 2008 it was obvious that this was not enough and JG told him that more significant cuts would have to be introduced; a salary needed to be removed not just hours.

A percentage breakdown of sales was used to identify overstaffed areas. The stores area in which the employee worked was identified as an area that was overstaffed. Two people men were employed and only one was required.

MB met with both employees in December 2008 and spoke with them separately. Both parties were advised that their roles were being considered for redundancy.

A skills matrix based on competence, costs attendance, performance and length of service was used to select the person for redundancy. On the skills matrix both scored equally well on key skills. All being equal the respondents salary was the higher of the two and he was selected for redundancy. It was a genuine honest selection.

At a meeting with the employee on December 22nd 2008 he was advised that he would be made redundant on 19th January 2009. He was given a copy of his skills matrix. It was a difficult meeting but he was advised of his right to appeal. The respondent refused to sign his letter of redundancy.

Under cross examination MB stated that this was the first time he had encountered the matrix. Voluntary redundancy was not considered and a salary reduction was also not considered. Alternatives were looked at with Human Resources but none were viable.

H.R Manager (CG) stated in her evidence that she attended the meeting when the respondent was told he was being made redundant. She was there as a witness. The respondent refused to sign his notification of redundancy. He was advised of his right to appeal in writing within 5 days.

A letter dated 23rd December was received from the respondent requesting a meeting. He was advised in a reply of 6th January 2009 that he should outline his grounds for the appeal in writing and that he could not bring legal or trade union representation, only a work colleague.

The respondent by return asked that the decision to make him redundant be put on hold and that he wished to be represented at a meeting by his trade union official.

A follow up letter issued on 20th January from the managing director advising of a meeting date of 26th January, again it stated that the respondent was entitled to bring a work colleague only. A follow up letter issued on 23rd January again from the managing director asking for confirmation of a meeting for 26th January. On 26th January a letter issued from H.R. advising him that his redundancy cheque was available for collection. A letter issued from the company on 3rd February 2009 advising that the matter was being treated as concluded and stating that if this was not the case to make contact with the managing director.

Respondent's (employee) Case

The employee commenced work with the company in 2003. Initially it was a small store and he did most of the goods inwards and paper work. The store moved twice and on both occasions it was up to him to re-organise it all. He had trained the other person in stores and did most of the filling and documentation. He had accepted the 10% pay cut and knew that the company was in difficulty

The employee stated that he did not understand the matrix and only saw the scores of the other person at the Rights Commissioner hearing.

He did not go to the appeal meeting as he was not allowed to bring a representative. He never accepted his redundancy payment as he felt that if he accepted it he would be closing the door on any further avenues for pursuing his case. His final letter to the employer dated February 10th 2009 stated that he would collect his redundancy cheque on the understanding that it is without prejudice. There was no further contact.

Determination

The Tribunal find that procedures were defective particularly in relation to communication with the respondent and the possibility of his position being made redundant.

The manner in which the matrix results were considered and implemented and communicated to the respondent were also defective.

The Tribunal finds that the respondent (employee) was unfairly dismissed and vary the Rights Commissioner Recommendation ref: r080226-ud-09 by awarding him €25,000.00 in compensation under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

