

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE-*Appellant*

UD889/2010

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. F. Crawford BL

Members: Mr. R. Prole
Mr. T. Brady

heard this appeal in Dublin on 31st August 2011

Representation:

Appellant: Mr. Paul Henry, SIPTU, Membership Information &, Support Centre, Liberty Hall, Dublin 1

Respondent: Ms. Kerry Molyneaux, IBEC, Confederation House, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

This case came before the Tribunal by way of an employee appealing the decision of a Rights Commissioner ref: r-081517-ud-09-TB

Respondent's Case:

The Managing Director (MD) gave evidence. He bought the company in late 2006. He invested in new plant for the business and things were going well until the economic downturn in late 2008. In March 2009 the full half year accounts showed a 26% reduction in output and a 35% reduction in profit. He consulted with key customers and discovered the pipeline was weakening. He spoke with the landlord and negotiated a 15% rent reduction in May 2009. He

also agreed a 15% - 20% reduction in external labour costs and reduced utility bills. In March 2009 he told the Board that he estimated that the business would lose €150,000 if something was not done. He proposed a cost reduction plan which was to reduce the head count. The general manager and three sale representatives were made redundant. He wanted to keep the shop floor staff so he met with the Trade Unions and proposed to a 10% cut in pay. However all staff would not agree to this. He then met the Trade Unions again and informed them that he was introducing a redundancy programme. On the 27th April 2009, he sent a letter to every employee explaining that a decision had been made to introduce a headcount reduction and that some redundancies were inevitable. He put together a matrix to be used for the redundancy selection and discussed this with the line managers. He told them to treat each member fairly and that he would review and amend accordingly. The managers did not know the weighting to be used to give the final score.

PS completed the matrix for the three employees in the installation section including the claimant. On the 30th April, MD sent the claimant a copy of the scored matrix and invited him to attend a consultation meeting on the 7th May to discuss this. The claimant went to see PS and left the matrix on his desk with some comments.

On the 7th May, the claimant brought another employee BW to the meeting. The meeting was to give the claimant a chance to go through each line of the matrix, but the claimant interrupted MD on several occasions and wanted to know if he was being made redundant. He wanted to know if he scored the lowest in the matrix. MD had to inform the claimant that he had scored the lowest and told the claimant he would give him six week's notice. The claimant said he might go back to painting and MD told him he might be able to give him some work as a sub-contractor. MD couldn't guarantee work as sub-contractors were hired on an ad hoc basis.

The claimant did not work his notice period. MD allowed him the time to look for other work. Towards the end of May the claimant asked for his redundancy money. On the 4th June, MD sent the claimant a letter offering to help him set up as a sub-contractor with the offer to purchase a second hand van and tools. He met with the claimant to make the redundancy payment and the offer of the van was not discussed.

Neither the claimant nor his Trade Union requested a meeting regarding the redundancy.

PS gave evidence. He is the Key Accounts Manager looking after the larger clients. He previously worked as the Installation Manager where the claimant worked. MD asked him to do the matrix of the employees in the installation section as the new manager was only there for a short period. He did the matrix for the three employees but did not know how the weighting would score the employees. He said the claimant was a good sign erector but that there were certain jobs he could not give him due to lack of experience. He is satisfied that the marks are correct. He then returned the completed matrix to MD. The following day, the claimant came to his office, put the matrix on his desk and said he did not feel that he was qualified to do the scores. The other two employees did not approach him.

Claimant's Case:

The claimant worked in the paint shop, assembly and outdoors. He did not think the matrix was done fairly. When he went to the meeting on the 7th May, he already knew he had lost his job.

He knew the scores of the other two employees, and overheard a conversation about him. He had forgotten that the meeting was scheduled for the 7th May and that is why he brought a fellow employee with him and not a union representative. He was not prepared for the meeting and wanted to know if going. There was no point.

At the meeting on the 7th May, the claimant told MD that he would go back to the paint shop, work a three day week or work as a van helper. MD said no to each one. He didn't want to get into debt and that is why he did not discuss the van offer. MD had told him he could not guarantee him work as a sub-contractor.

He got a new job on the 23rd June 2009, and is employed full time.

Determination

Having carefully listened to the evidence adduced by both parties the Tribunal is satisfied that the claimant was dismissed by reason of redundancy and that the matrix selection used for selecting staff to be made redundant was appropriate in the circumstances.

Accordingly the Tribunal upholds the recommendation of the Rights Commissioner ref: r-081517-ud-09-TB and the appeal under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)