

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE - *Appellant*

CASE NO.
UD2215/2009

against

EMPLOYER - *Respondent*

under

UNFAIR DISMISSALS ACTS, 1977 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms J. McGovern B.L.

Members: Mr D. Peakin
Mr F. Barry

heard this appeal at Dublin on 17th February 2011 and 28th June 2011

Representation:

Appellant:

Respondent: Sherwin O'Riordan, Solicitors, 74 Pembroke Road, Dublin 4

The decision of the Tribunal was as follows:

The Financial Controller and Operations Director gave evidence that at the start of 2009 the majority of the company's work came from a significant telecommunications contract that it had secured. However, the various projects associated with this contract began to come to an end around the time of June 2009. The company re-tendered for the contract but was informed in August 2009 that it was unsuccessful. The company's workload decreased from the time of June 2009 through to September and therefore the company could not sustain the same number of employees. The Financial Controller examined the costs and resources of the company. The management team (comprising of the Financial Controller, the Project Manager and a director of the company) met each week to discuss the workload on hand and to match that work to staff resources. The management team decided that some redundancies were required. The management team also held a weekly meeting with staff to discuss ongoing workloads and any other issues. As part of the weekly meetings staff were informed that the company had been unsuccessful in re-tendering for the telecommunications contract. The staff would have been aware of the company's reducing workload.

The witness stated that the management team reviewed the staff and a training matrix was drawn up for the process of selecting staff for redundancy. The employees training matrix was opened to the

Tribunal. The matrix did not include members of management or administration staff. In considering the selection of employees for redundancy, the management team considered factors such as length of service, work experience, training and the type of future work the company hoped to secure. The management team made the decision that going forward one less DC technician was required.

The claimant worked as a DC technician. Another employee (hereinafter referred to as Employee C) was also a DC technician but he had a greater length of service than the claimant. Employee C also had six years experience as a DC technician whereas the claimant had only one year's experience. Employee C also had experience of more technical work including UPS systems. In addition to this Employee C had carried out the role of acting service manager when that manager was on annual leave. The Managing Director was also a DC technician but management were not included in the employees' training matrix.

At first the management team considered placing staff on short time. A letter dated 5th August 2009 was given to all staff notifying them of the commencement of short time. However, the short time was not actually implemented as it was realised that further action, such as redundancies, was required.

The witness stated that up until the time of early 2009 the company had a lot of project work to hand but after that time the work was smaller projects and there was also a move towards renewables in the future. In considering the future work of the company, the management team had to consider what employees would specifically fit into that work. As a result the claimant's position was selected for redundancy. The claimant was informed of this at a meeting on 4th September 2009 and it was confirmed to him in letter dated 7th September 2009. The claimant was the only employee made redundant at that time but the company did not renew the contracts of three other employees who had been working under rolling fixed-term contracts. There have been no further redundancies since that time.

The witness referred to an incident that had taken place on a client's site at the end of July 2009. He stated that it was his understanding that the claimant was working on inputting batteries when a spanner short-circuited the battery system. The client suspended the claimant from its sites for a period of time but the respondent company did not discipline the claimant. Although the witness was not the claimant's direct manager he was aware of the incident and although it was not the sole reason why the claimant was made redundant he stated that it did form part of the decision.

During cross-examination the witness confirmed that Employee C was on compassionate leave and carrying out other work from the time of August 2008 to February 2009 but he stated that regardless of whether or not this broke his continuity of service it was Employee C's experience that the company required for future work. He confirmed that Employee C was provided with a P45 when he left the employment of the company in August 2008.

In reply to questions from the Tribunal, the witness stated that since the claimant was made redundant, staff have been placed on short time, extended leave given over the Christmas period and salaries reduced by 10%.

A director of the company gave evidence that the company specialises in power supply installations. From the time of January 2009 it was obvious that the company was suffering a decrease in business. By the time the telecommunications project was coming to an end in June 2009, other main customers had reduced the number of projects and the company was short on

work. The company employs approximately ten people. He confirmed that at the management meetings discussions had taken place regarding re-structuring.

Staffing costs were a major factor in the management team's considerations and they examined options such as short time and giving time in lieu instead of paying over-time. The director explained that a decision was made not to proceed with short time working after he had spoken with the company's customers and they had told him that there was no market at that time for more projects. The cost of staff was the highest of the company's costs. For that reason the management team had to identify which employees could carry out critical roles and who was surplus. The company had identified the area of renewables as an area of future work but a certain skill set is required for this work. The director did not think that the claimant was qualified in this area.

The director confirmed that due to the incident on the customer's site the claimant could not be placed on any of that customer's sites for up to two months due to his suspension from site. That customer provided 70% of the company's workload at that time. At a technical meeting during August 2009, the director informed the claimant of the difficulty that the ban from the sites could cause to his employment. The incident was discussed at a staff meeting as well as the financial situation of the company. The director also mentioned the possibility of redundancies at several staff meetings.

During cross-examination it was put to the witness that the claimant had worked on some of the customer's other sites after the incident had occurred but the director refuted this. He confirmed that he was concerned about the incident on the site as the circumstances of the incident were not as the claimant had stated. If the claimant had followed procedures then the incident would not have happened.

The Project Manager gave evidence that he manages the employees and schedules and divides the work. He was present at the management meetings and he confirmed that options other than redundancy were discussed. There was no new work and he confirmed that the company did not in fact receive new work until early in 2010. He confirmed that the company had advertised for a DC technician in January 2010.

He stated that it takes time to train employees, as the work, which the company does, is not standard electrical work. He confirmed that Employee C has experience with UPS systems and could be utilised on more sites. He acknowledged that Employee C's UPS experience had not been noted on the employees' training matrix. The matrix was merely a guide to inform the Financial Controller who would not have had as much knowledge of the employees' skills as the Project Manager.

The claimant gave evidence that he was employed by the respondent company as a DC technician from the time of 21st May 2008.

At the customer's site on 31st July 2009 a fault had occurred with the batteries on the power supplies and he reported this issue to the Project Manager. The claimant was subsequently asked for a report of the incident, which he provided to the company. When he met with the director in relation to the incident he was informed that he was not allowed onto that particular site for two months. The claimant understood that he was not suspended from the customer's other sites.

When he attended the meeting on 4th September 2009 with the Financial Controller and the Project Manager they informed him that his position was redundant. They did not discuss with him the selection process for redundancy nor the employees' training matrix. The claimant stated that he first had sight of the matrix on the first day of the Tribunal hearing. The claimant refuted that he was given a week's notice stating that he was handed the letter of 7th September 2009 at the meeting. He also noted that he had longer service than Employee C.

The claimant gave evidence of loss.

During cross-examination the claimant confirmed staff were informed of the company's decreasing workload and the possibility of a three-day week but redundancies were not discussed.

The claimant stated he did not work on UPS systems, as there was a special skill set required for this work and he had not received training in this area of work.

Determination:

The Tribunal carefully considered the verbal and documentary evidence adduced in this case. The witnesses for the respondent company gave extensive evidence that a reduction in the number of DC technicians was required, given the company's reducing workload in the face of economic difficulties. The Tribunal was satisfied from the evidence that a genuine redundancy situation arose in relation to the claimant's employment as he had the least experience. The claimant did not dispute this in his evidence.

However, having considered the evidence the Tribunal also finds that the process utilised by the respondent company to be lacking, both in how the company identified the claimant as the employee to be made redundant and also in notifying the claimant of the impending redundancy. Proper procedures were not afforded to the claimant in that he was not given prior notice of the meeting, nor given an opportunity to organise representation for the meeting, nor was he given an opportunity to put forward possible alternative solutions. This consequently exacerbated the impact of the redundancy on the claimant. In these circumstances the Tribunal makes an award to the claimant of €3,700.00 under the Unfair Dismissals Acts, 1977

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)