

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE- *appellant*

CASE NO.
UD852/2010

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: Ms J. Winters
Mr T. Brady

heard this appeal at Trim on 19th October 2011

Representation:

Appellant(s) : Mr. John Regan, SIPTU, Dan Shaw Centre, Dan Shaw Road,
Navan, Co Meath

Respondent(s) : In Person

This case came before the Tribunal by way of an employee (the appellant) appealing against the recommendation of a Rights Commissioner under the Unfair Dismissals Acts 1977 to 2007 ref. r-078245-ud-09/JT

Respondent's case

The respondent company trades as general merchants manufacturing and supplying timber products to the building industry. The company employed over 100 employees at the height of the boom in the building industry in 2006. Due to the decline in the industry the company experienced a two thirds reduction in its turnover and a corresponding reduction in employees to a current figure of 38, some of whom are employed on a three day week basis. The appellant was employed as a supervisor in the respondent's rough timber department and this department was particularly badly affected. The company employed 7 employees in the rough timber department at the height of the construction boom. There is practically no business in that department and there are no employees working there. A director of the company currently carries out whatever work is necessary in that department on a part-time basis.

The appellant had been on sick leave absence for approximately four months and returned to work

on 14 April 2009. Mr (M), General Manager of the company asked the appellant to call to his office upon his return to work on 14 April 2009. He explained the company's position to the appellant and informed him that he was being made redundant. The appellant became annoyed and stormed out of the meeting. He returned some minutes later stating that he was not happy with the situation and wanted paper work. A second meeting was arranged and the appellant said he wanted a representative at that meeting and would be bringing his wife. The company had no difficulty with this and a second meeting took place at approximately 11.30am. The appellant was accompanied by his wife at that meeting. Mr. (M) explained to the appellant that his position was being made redundant and the company did not have any alternative positions to offer the appellant. It was also not feasible to offer the appellant a three day week. The claimant requested that he be provided with a letter before dinner time and Mr. (M) facilitated this request providing the appellant with a letter confirming the termination of his position of employment with the company. The company did not deny the appellant the right of representation at the meeting and at no time did the appellant request union representation.

Claimant's Case

The claimant commenced working for the respondent company in June 1991. He was absent from work on sick leave for a period of time between December 2008 and April 2009. He was in regular contact with the company during his sick leave absence. He submitted medical certificates during this period and was certified as being fit to return to work on 14 April 2009. He returned to work at 8am on that morning and was called to a meeting by Mr. (M) at 9am. He was aware of the general downturn in the respondent's business and was expecting to be told that he was going to be placed on a three day week. However Mr. (M) told him that he was being made redundant and was going to be paid his statutory redundancy entitlements. The appellant was not happy with this position and contacted his union representative who advised him to seek a further meeting with higher management and be allowed representation at that meeting. He asked that he be allowed representation at this second meeting but this representation was denied to him by the company. He attended a second meeting with the company later that morning accompanied by his wife. He enquired about the possibility of working on a three day week basis or being re-located to another department within the company but these alternatives were not considered by the company.

Determination

The Tribunal is satisfied that the appellant's position was undoubtedly redundant. The numbers in the department in which he supervised were reduced from seven at the height to one person working a three day week.

The appellant was not unfairly selected for redundancy within the meaning of section 6 (3) of the Act. There were no "other employees in similar employment" to whom "the circumstances constituting the redundancy applied equally".

There was no breach of the code of practice set out in S.I. 146 of 2000 which governs grievance and disciplinary procedures. The Tribunal does not see how disciplinary and grievance procedures would be relevant to a redundancy situation, but in any event we make a finding of fact having heard the evidence of both parties. The Tribunal has not been convinced by the appellant's version and prefers to accept the version of events given by Mr. (M) for the respondent.

The Rights Commissioner thought that there might be a technical breach of S.I. 146 but we do not agree. Otherwise we agree fully with the findings of the Rights Commissioner and dismiss the

appeal.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

