

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE

CASE NO.
UD179/2010

-Appellant

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

EMPLOYER -v-
EMPLOYEE

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr R. Maguire, B.L.
Members: Mr G. Mc Auliffe
Ms M. Finnerty

heard this appeal at Dublin on 19th January 2011

Representation:

Appellant: Ms Bernadette Thornton, S I P T U,
Civil Aviation Branch, Corballis Park, Dublin
Airport, Co Dublin

Respondent: Mr. David Farrell, Ir/Hr Executive, IBEC,
Confederation House, 84/86 Lower Baggot Street, Dublin 2

Background:

This case is before the Tribunal by way of an employee appealing a recommendation of a Rights Commissioner ref: r-074194-ud-09/M Mc G.

The respondent in this case is an airline company. The claimant was a ramp services agent whose duties included maintaining storage facilities, delivering in-flight catering supplies to the aircraft, ensuring adequate stock was on board and liaising with the in-flight services manager and suppliers.

The Tribunal heard opening statements from the respondent. He explained that the company went through a period of rationalisation. The company then decided to out-source the in-flight services. The effect of outsourcing of the flight catering service meant that the aircraft could be

cleared and topped up at a reduction in costs of €60k. There were 3.5 redundancies in the catering area, two of those were ramp service agents, one was the in-flight cashier, and the other role of catering admin was reduced to a three-day week. The situation was a collective redundancy situation whereby fifty-seven staff embarked on a thirty-day consultation. The claimant's position was made redundant on 09th January 2009 and the claimant subsequently accepted redundancy payment.

The company went into examinership from August to November 2010.

Respondent's case:

The Tribunal heard evidence from the human resource manageress. She explained that in 2008 the price of oil had a huge impact on the respondent's finances. They constantly revised their budgets in 2008.

The company outsourced their call centre in Shannon. They outsourced the Dublin ground handler's positions. In October 2008 they told staff that there would be redundancies. The worst-case scenario would be 100 redundancies.

The company reduced their aircraft from thirteen to ten therefore there were fifty-seven redundancies. They had drafted a memo for staff and there was a thirty-day consultation period. This put a strain on the company finances, as they were not sure they could make the payroll.

The company did not recognise the trade unions. However they had internal representative bodies: internal negotiation bodies that represented staff.

As well as the reduction in aircraft and redundancies the company looked at ways of working and to spread work.

In 2008 they outsourced the catering positions and the customer service office. Five staff were asked if they wished to re-locate to the outsourced positions in Galway but they declined as they were based in Dublin.

Every department were reducing positions and there was no opportunity to redeploy or alternatives to redundancy with the exception of outsourcing the positions, (outsourcing was the only alternative other than redundancies i.e. to cut costs it was redundancies or outsourcing).

The company implemented pay cuts of 7% average in May 2009. The management team negotiated with banks. In the winter of 2009 to 2010 they were hit with the weather, in the summer of 2010 there was the volcano eruption so they "were back to square one".

They applied to the High Court to seek protection and subsequently exited examinership.

The Tribunal heard evidence from the in-flight services manager.

He explained that the catering personnel consists of just one person and who is now on a three-day week. The witness extensively explained his role and the ramp services agent role. The service agents were based in Dublin in the catering warehouse. The cabin crew would tell the agents how many newspapers, bars of chocolate or water etc. that they would need to top-up supplies on the aircraft.

They lost the Kerry route and the Cork route was reduced therefore towards the end of the summer (2008 or 2009) they had only three aircraft in Dublin; “the top up was down to a couple of newspapers, a couple of chocolate bars”. The amount of flight top-ups required was down from 21 to 14.

The company outsourced the cleaning of the aircraft to a company. This company could provide them with top-ups also. This would reduce costs, as amongst other things they would not have to rent the warehouse. The company could save €60k and including the warehouse rent of 70k, and other savings, would mean a total of circa €129k.

Regarding the job positions they realised there was a gap and they would need to retain one person to manage the relationship (with the outsourcing and various bodies). So the job position was deemed necessary but on less hours.

They sent out a memo to the employee and groups at the end of October 2008. They then met each group and he met the cabin crew and office staff; they met each group in November. The employees had a representative group. The ramp services were covered by the clerical representative group. The cabin crew group had a “criteria” of “last-in-first-out”. With the clerical staff it was not clear whose position was to be made redundant. With the catering staff they made it clear that it was very likely that the work would be outsourced.

One admin catering supervisor called to him and said he was willing to take a cut in pay/cut in hours. The admin catering supervisor person presented a suggestion whereby he would take on a role as a liaison. He agreed with this suggestion and saw it a three-day week role. He presented this to his boss and the boss was happy and this position was agreed. Other supervisors said they were willing to take on extra duties for example cashier work; the supervisors eventually did the cashier work.

Claimant's case:

The Tribunal heard evidence from the claimant who told the Tribunal that on November 08th 2008 he and his colleagues were told that their jobs were being outsourced. He went to D'OL

(wrote to D'OL) Trade union official. He went to a meeting and was told he could not bring a trade union representative. He was told that he could bring a colleague. There was no discussion as to allow for a pay cut. He and two colleagues were told that their positions wereredundant. They left and the supervisor who had been at the meeting said to them that he wasnot happy. The supervisor returned to the meeting place. He returned some time later and toldthem that he himself was now being kept on and that the claimant and the other employee wereredundant. He did not know what position the supervisor was to be retained in.

The claimant gave evidence as to his loss.

Closing:

The Tribunal heard extensive closing arguments and submissions from both representatives.

Determination:

The Tribunal having heard the evidence adduced in this case makes the unanimous determination that a genuine redundancy situation existed in this case. The claimant's positionwas interchangeable with one of three of his fellow employees and the third employee's position was as a supervisor. It is worth noting that the company should have consulted morethan they did and kept notes of meetings. The company are to be criticised for lack of recordsand that they did not take minutes. It also must be noted that the company did allow for an appeal of the dismissal, which was by reason of redundancy, on or about 02nd January 2009.

As determined by the Tribunal there was a redundancy situation and accordingly, the claim under the Unfair Dismissals Acts 1977 to 2007, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

