

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

EMPLOYEE

- claimant

CASE NO.

RP2849/2009

UD2463/2009

against

EMPLOYER

- respondent

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms F. Crawford B.L.

Members: Mr J. Flanagan
Mr A. Butler

heard this claim at Wicklow on 9th June 2011 and 5th October 2011.

Representation:

Claimant: Mr Pat Brady, Workplace Solutions, 56 St. Columbanus Avenue, Milltown
Dublin 14

Respondent: Mr. Michael Ramsey BL, instructed by Liston & Co, Solicitors, Argyle House, 103-
105 Morehampton Road, Donnybrook Dublin 4

At the outset of the hearing the claim under the Redundancy Payments Acts, 1967 to 2007 was
withdrawn.

The determination of the Tribunal was as follows:-

Respondent's Case:

The respondent is engaged in building and construction. The claimant worked casually for the
respondent during the summer months from August 1999 and then commenced full time
employment as Site Manager on 25th September 2000 and worked on site K1 in Wicklow. The
respondent had a second site K2 also in Wicklow and several other sites in the country.

The claimant was sent a contract of employment in June 2002 but never signed this contract.

During the period 2005/2006 the respondent employed 50 employees. At present only nine staff are employed.

Due to the economic downturn in 2008/2009 an employee was made redundant in February 2009.

It was anticipated that a further redundancy would be required. The company was hoping for a volunteer. Both CM, Construction Director and NC, Managing Director visited the sites and ascertained what work was outstanding. They contended that there were two managers in the Wicklow area where the claimant worked.

CM, is site based and interacts with staff each day. A consultation process commenced in mid August 2009 and both NC and CM spoke to both the claimant and Site Manager AD. They were asked for their input. A matrix was drawn up of 5 site managers. Employees understood the matrix. Each employee was ranked on technical ability, which was a combination of qualifications, experience, technical skills and other skills? Both CM and NC independently ranked each manager according to their technical ability. The claimant felt at the initial stage that he should engage in the process but was afraid that he would incriminate himself.

The claimant was ranked lowest in the matrix. It was not possible to re-deploy the claimant as the respondent was downsizing its operations. The claimant's notice of redundancy commenced on 24th August 2009 and he was given one month's notice. He was paid an enhanced redundancy package and the company vehicle was sold to him at no extra cost. He was also paid his minimum notice entitlement and payment in lieu of holidays. He was never replaced on the site. It was believed the system was fair and transparent.

Claimant's Case:

The claimant commenced part time work with the respondent in 1996 and started full time in 2001. He was engaged as site manager. The respondent owned several sites and it was common to move from site to site.

The claimant was invited to a meeting with NC and CM. He was informed that either he or AD would be made redundant and a consultation period would take place the following week. He did not engage with the process as he did not think he would be made redundant because of his seniority in the company. It was intimated to him that if he wanted to become redundant he should contact the office. The impression he got at that time was that it was more like a voluntary redundancy.

As the claimant had ongoing problems with his mobile he telephoned the Financial Accountant during the consultation period enquiring about getting a new mobile phone. He was told that he would not be getting one. He felt it was a fait accompli. By letter dated 26th August 2009 the claimant was notified that he was being made redundant. In that letter NC indicated that there was no suitable alternative employment available. He was given an enhanced redundancy package together with the company vehicle. He was not offered a right of appeal.

The claimant contended that he could have worked on any of the respondent's sites. He was shocked. He thought that senior employees would stay in the company. He was unaware a matrix had been devised and did not see it until the first day of the hearing of his case and could not make any sense of it.

He had never been subjected to criticisms of his employment during his tenure.

The claimant applied for many positions since the termination of his employment. He secured work from November 2009 to January 2010.

He commenced a full time course in energy management in September 2011. He attends this course five days a week.

Determination:

The Tribunal carefully considered the evidence adduced during the course of this two day hearing. The Tribunal is satisfied that a genuine redundancy situation existed in the company. However, the Tribunal finds that the selection process was unfair and the claimant was not offered a right of appeal.

In the circumstances, the Tribunal finds that the claimant was unfairly selected for redundancy and awards him €21,000.00 under the Unfair Dismissals Acts, 1977 to 2007. This award is in addition to any redundancy payment made.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)