

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE
- *claimant*

CASE NO.
UD2599/2009

against
EMPLOYER - *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. Hurley
Members: Mr J. Hennessy
Ms S. Kelly

heard this claim at Abbeylax on 9th May 2011
and 31st August 2011

Representation:

Claimant: In Person

Respondent: Ms Ruth Mylotte BL instructed by
Mason Hayes & Curran, Solicitors, South Bank House,
Barrow Street, Dublin 4

Respondent's case:

The Tribunal heard evidence from the General Manager of the Respondent company. He gave extensive evidence as to the claimant's position in the company. He gave evidence as to the need for cost savings in the company and evidence as to the claimant's selection for redundancy.

The Tribunal heard evidence from the financial manager who gave evidence as to the financial situation, and extensively as to the claimant's selection for redundancy and reasons for the selection of the claimant.

(KMcN), Human Resources Partner for the respondent company gave evidence that the company had to introduce cost saving measures. The company had introduced a series of redundancies in 2008 and these were followed by further redundancies in 2009. The company was also restructured and departments within the company were amalgamated. In 2008 the role of two service managers one of which included the claimant's position was amalgamated into one role. An interview process took place at that stage and the claimant was successful and obtained the new position. Employee

(PC) was made redundant as a result of this amalgamation. The company has reduced its workforce from 28 employees in 2008 to a current figure of 19.

In 2009 the company introduced further cost saving measures including salary freezes, reduction in overtime, reduction in the use of contractors and a reduction in rental costs. Employees who had left the company were not replaced and in January 2009 and May 2009 further redundancies occurred. On 30 April 2009 she (the witness) met with the claimant and informed him that his position was at risk. A consultation period was entered into with the claimant to explore alternatives to redundancy. The claimant was invited to put forward any suggestions during this period and a further meeting was scheduled for 8 May 2009. She met with the claimant again on 8 May 2009 and as no suitable alternative re-deployment positions could be identified she informed the claimant that his employment as service manager was to be terminated on 22 May 2009. The claimant was given the opportunity to appeal the decision. He did appeal the decision and the appeal was heard by the company's Finance Director on 19 May 2009. The Finance Director found that the role of the claimant was selected for redundancy for operational reasons and that a fair consultation process had been followed. The claimant was not selected for redundancy due to poor performance as he had exceeded the job requirements in a number of areas and this was reflected in his last appraisal. The Finance Director did not uphold the appeal against redundancy.

Claimant's case:

The claimant gave evidence that he is a qualified engineer. He is not a qualified diesel mechanic. As part of his role as service manager he developed relationships with customers and had received some training in the roles of sales manager and office manager. He believes that he could have fulfilled either of these roles and the company did not give due consideration to him being able to carry out these roles. He accepted that the company had introduced redundancies in 2008 and in January 2009 and that it was also necessary to introduce other cost saving measures. He accepted that the company also introduced a recruitment freeze but did not feel that they fully explored other measures to redundancy such as salary reductions or short time. He felt the decision to make him redundant was already made at the meeting on 8 May 2009 and that meeting was not a consultation meeting.

He confirmed that he secured alternative employment in June 2009 for a short period of time. He was unemployed for approximately 4 months. He secured further alternative employment in February 2010 and earns €13,000.00 less per annum than he did when working for the respondent company.

Determination:

The Tribunal carefully considered the evidence adduced and the Tribunal is of the view that the claimant has not identified any substantial defects in the selection process for redundancy. The claimant was offered a one week consultation period during which alternatives to the redundancy of his position could be explored. In this period the claimant did not make, in the face of the company's straitened financial position any sustainable suggestions which could have resulted in an alternative to the redundancy of his position. The company's deteriorating financial position was a dominant feature in the background of the selection process for redundancies.

In the circumstances the Tribunal finds that the claim under the Unfair Dismissals Acts 1977 to

2007 fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

