

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE *claimant*

RP1026/2010

UD760/2010

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 J. McGovern B.L.

Members: Mr F. Cunneen  
Mr. P. Woods

heard this claim at Dublin on 27th July 2011  
and 14th November 2011

Representation:

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Claimant(s): Mr. Cian Mahoney BL instructed by Ms. Emma Thunder, John Glynn & Company, Solicitors, Law Chambers, The Village Square, Tallaght, Dublin 24

Respondent(s): Ms. Eugenie Houston BL instructed by Wendy Doyle, Solicitors,  
20 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

### **Respondent's Case**

The MD (RT) told the Tribunal that that the respondent was an entertainment distribution company. The business peaked in 2007 and 2008. It invested in an IT system in 2007, which did not work out and subsequently put the company under pressure. In 2008, following a reduction of 50% in turnover the shareholders took a 50% cut in remuneration, with a reduction of up to 20% for employees and certain employees were made redundant. Eighty were employed at peak and it now employs fifty-two. In May 2009 the directors and senior management took a substantial pay cut and no bonus. In January 2010 a further series of redundancies were implemented. The principal of Last In First Out (LIFO) was used for

redundancies in all departments. The financial director (SC) was employed with the respondent for eleven years and the operations manager (OM) for sixteen years.

The managing director (RT) gave evidence that on the 11<sup>th</sup> January 2010 the operations manager (OM), who was responsible for the warehouse, was approached by the claimant and his wife about the possibility of redundancy. OM then brought this to the attention of the Finance Director (SC) on the 12<sup>th</sup> January. On the 5<sup>th</sup> February 2010 the operations manager was approached again on the basis that the claimant and his wife who was also employed with the respondent wished to return to Poland. Both OM and SC went to RT's office and discussed the issue of the claimant and his wife and the fact that they wished to be made redundant on the basis that they were going back to Poland. RT was surprised because the job was still there and had to be done. The claimant and his wife were not originally considered for redundancy given LIFO applied, their work was still available and if they left the respondent would have to replace the claimant and his wife. Five employees were made redundant in January 2010.

In cross-examination RT stated that the process regarding redundancy was based on LIFO. The respondent had suffered a major loss year on year. It looked at cost cutting but redundancy was the last resort. It was not the case that both the claimant and his wife were summoned to the office and were informed they were being made redundant. They requested redundancy. He was not aware that the claimant and his wife were actively seeking employment in Ireland. The warehouse was the biggest casualty in redundancy.

The operations manager (OM) gave evidence that he was employed with the respondent for sixteen years. The operations manager told the Tribunal that five employees were made redundant on the 5<sup>th</sup> January 2010 and pay was reduced by ten per cent on the 8<sup>th</sup> January 2010. The claimant's wife requested to speak to him on the 11<sup>th</sup> January 2010 and she told him that she and the claimant wanted to be made redundant. He was surprised and asked her if they would get jobs. She told him that both of them intended to return to Poland. He went to speak to the financial director. Again on the 5<sup>th</sup> February the claimant's wife asked him and he went back to the financial director and then went to the managing director. The claimant and his wife had a good relationship with the respondent and they wanted to do right by them.

In cross-examination he stated that businesses were closing down every day and they were surprised by this. He felt it was wrong that they were made redundant and both were replaced. Out of three that were let go no one was re-employed. He told the claimant's wife that he needed to give at least one week's notice so that he could replace her.

He took notes of the conversation but did not have them with him. He could not recall if she returned as a supervisor after her maternity leave. He was shocked to hear that the first time the claimant and his wife heard of redundancy was at a meeting they were summoned to on the 12<sup>th</sup> February 2010. He was responsible for operations and went through the changes that needed to be implemented. He was informed regarding the number of employees that would be made redundant. The operations department was reduced by three. He acknowledged that the claimant and his wife were made redundant. He had to replace them.

The financial director (SC) told the Tribunal that in January 2010 he looked at all departments to establish what areas employees would be made redundant. Five employees were made redundant and were informed on the 4<sup>th</sup> January 2010. There was a drop in sales

and the respondent had to introduce cuts. Redundancy was implemented on the basis of LIFO. The claimant and his wife were not part of this.

On the 12<sup>th</sup> January 2010 the operations manager informed him that the claimant and his wife had requested redundancy. He had scheduled a meeting with the managing director and told him about the request. They did not take it seriously. The operations manager and the witness went to the MD and they had a discussion and decided to let them both go but they would not leave until they got replacements for them. The claimant and his wife were brought to the office on the 12<sup>th</sup> February 2010 and given their papers and were wished well. The claimant and his wife signed the RP50 and had money transferred into their accounts.

In cross-examination he stated that the general process in redundancy was that he looked at all departments to establish where he could trim down. His involvement was to gather the information on who would be made redundant. He did not question who was to be made redundant. The operations manager would have told him that three employees could be made redundant. They had to select employees who were surplus to requirements. Once the final decision was made he would have dealt with the paper work. He did not seek legal advice regarding redundancy. He was surprised that the 12<sup>th</sup> February was the first time that the claimant and his wife had heard of redundancy, they had requested redundancy. Both the claimant and his wife were very good workers. On reflection he stated that it was not a redundancy situation.

### **Claimant's Case**

The claimant told the Tribunal that he commenced employment with the respondent on the 1st March 2007. He delivered DVDS and CDS to a supermarket chain. When he finished this work he undertook work in another department. He returned to Poland at Christmas 2009. One or two meetings took place and all employees were told about a ten per cent pay cut and that no one would be made redundant and that was it. He was rostered to work until the 12<sup>th</sup> February 2010. He was told at a meeting by the operations manager and the financial director that due to the recession that he was being made redundant. He was shocked. He was not working with the respondent as long as his wife. He was downstairs when his wife told him she had just been made redundant. The MD and the operations manager both led the meeting. They told him that due to the recession they had to do it. He was not told why he was selected. He received his redundancy after he left the office.

He was not required to work his notice period. It was not the case that he sought redundancy so that he could return to Poland. He sought alternative employment after he was made redundant. In April 2011 he enrolled for an English course to enable him to have the opportunity to obtain a better job. He visited companies in an endeavour to obtain alternative employment.

In cross examination he stated that his English was not very good. When put to him how he understood so well what happened at the meeting on the 12<sup>th</sup> February 2010 he replied that he understood a lot but sometimes things had to be explained to him. He did not ask questions at the meeting on the 12<sup>th</sup> February 2010.

He did not have to work his notice and he did not know why he was not requested to work his two weeks' notice.

## **Determination**

During his employment it appeared that he had a very good working relationship with the employer. In the circumstances it seems odd that he could be selected for redundancy at all where there was still work available.

It also seems unusual that he was not requested to work his notice given the fact that he was such a good worker. The claimant accepted the redundancy without any argument or question even though he gave evidence he was too shocked to dispute it. This does not correlate with the good working relationship that seemed to exist between the parties.

While a redundancy was implemented the Tribunal has some doubts about the circumstances behind the said redundancy. From the evidence tendered the Tribunal was not convinced that the redundancy process carried out by the respondent opposite a number of employees was particularly consistent. At the same time, it appears from the evidence of the claimant that he accepted the redundancy and the terms offered without protest and this is consistent with the respondent's case. Given all the circumstances the Tribunal finds that the claimant was not unfairly selected for redundancy and the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

The claimant accepted redundancy and no award is being made under the Redundancy Payments Acts, 1967 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)

