

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:

CASE NO.

EMPLOYEE - *claimant*

RP1552/2010  
UD1134/2010  
MN1103/2010  
WT472/2010

against

EMPLOYER - *respondent*

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005  
ORGANISATION OF WORKING TIME ACT, 1997  
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007  
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr C. Corcoran B.L.

Members: Mr M. Noone  
Mr N. Dowling

heard this claim at Dublin on 18th October 2011  
and 14th December 2011

Representation:

\_\_\_\_\_

77 Sir John Rogerson's Quay, Dublin 2

Respondent(s) : Ms. Mary Gordon BL instructed by Noel Smyth & Partners, Solicitors, 22  
Fitzwilliam Square, Dublin 2

**Preliminary Point**

The claims under the Redundancy Payments Acts, the Minimum Notice and Terms of Employment Acts and the Organisation of Working Time Act were withdrawn by the claimant's representative at the commencement of the hearing.

## **Respondent's Case**

The Managing Director of the respondent company known as (BE) gave evidence that the company is involved in the construction industry dealing with mechanical and electrical services. The company expanded in the boom years of the construction industry but experienced a significant decrease in business following the economic downturn. The company's turnover decreased from 27.5 million in April 2008 to 16.9 million in April 2010. Profit margins were eroded and cash collection became a huge issue. The number of projects that the company had on hand reduced from 18 to a current figure of 5. The claimant was employed as mechanical contracts manager dealing with small to medium sized projects. His role was both managerial and technical. As a result of the downturn in business the company had to implement a series of redundancies. These redundancies largely took place in 2009. As part of this process the company reduced the number of contract managers from 15 to 3 and the claimant was one of the contract managers made redundant. The company had already made 10 contract managers redundant prior to making the claimant redundant. The witness could not confirm if any discussion took place with the claimant concerning alternatives to redundancy as he was not the person in the company who dealt with the redundancy. The company has remained solvent and profitable turning a profit of approximately €300,000.00 in 2009.

(AD), director of the company gave evidence that she joined the company in 1997. The company grew steadily and she was involved in a number of the larger projects. By 2008 cashflow had become much tighter and the number of projects on hand had reduced significantly. She assumed responsibility for a number of projects in 2009 on sites where the claimant was employed as contracts manager. Prior to this she did not have much interaction with the claimant. The claimant assisted her on a site in South Dublin and she told the Tribunal that she did not have a fractious relationship with him. She felt his computer skills required improvement and she was happy to support him in that regard by providing training to him. She also provided him with a laptop computer to assist him in developing his computer skills. She wanted to make the best use of time available and in that regard she carried out computer work while the claimant worked on research. She had no major disagreements with him and tries to assist people as much as possible. She is very direct person and requests people to do what is required. She did not accept that she humiliated the claimant in the workplace and has no recollection of preventing him from using the telephone. As projects finished the company had to review its staffing and over 40 employees were made redundant including the claimant. She was involved in the decision to make the claimant redundant. The company does not have a written criteria in selecting people for redundancy but applies a last in first out policy where sensible.

(JB), director of the company gave evidence that he has responsibility for personnel. He worked with the claimant and had a good relationship with him. The company had no issues with the claimant's work performance as he was good at his job. The company had experienced a very difficult year in 2009 and was on a financial knife-edge. The witness had made a number of employees redundant prior to making the claimant redundant and the claimant was aware of that. In that regard his approach was always one of fairness but the company had simply ran out of work. He had known the claimant for a long time and explained the position to him. He discussed the situation with (AD) prior to informing the claimant that he was being let go on 27 October 2009. He told the claimant that he would be paid until the end of the year and it was not necessary for him to work his notice period if he did not wish to do so. That choice was left with the claimant. It was never formally brought to his attention that a poor working relationship existed between (AD) and the claimant. He gave further evidence that he has a basic knowledge of the Redundancy Payments Acts. The company does not have any written procedures concerning redundancy. Redundancies

are carried out fairly. The company did not issue the claimant with a contract of employment and he was not offered any alternative position within the company.

### **Claimant's Case**

The claimant gave evidence that he had substantial industry experience in Ireland and England before joining the respondent company in July 2005 as a mechanical contracts manager. On joining the respondent company he reported directly to (JB) and continued to do so until April 2009. He enjoyed a good working relationship with (JB) whom he found to be very easy to deal with and very understanding generally. He was very happy in his job and worked on a number of medium sized projects on construction sites in Blackrock, Leopardstown and Ballsbridge. Work on the Leopardstown project concluded in May 2009. He then moved to the Ballsbridge site which had been tendered for as a short term project. The work on the Ballsbridge site involved electrical work and he accepted that he did not have the ability or technical expertise to carry out this work. He was assured that he would be provided with the required technical expertise in that regard but this did not happen. He denied that it was a stop gap project as it ran until April 2010.

In or around April 2009 he was told that he would no longer be reporting to (JB) but would report to (AD). He did not have any real experience of working with her prior to this. As her subordinate he found her attitude very difficult to deal with. She was constantly critical of his work and she screamed at him on many occasions. She told him that he was not capable of using a computer and instructed him to turn it off. She also prevented him from using the telephone and used the 'F' word towards him. It became impossible for him to carry out his work. He felt humiliated by her and eventually was certified as being unfit for work as a result of depression and stress. While absent on sick leave he contacted (BE) and met with him and explained that he could not cope with working to (AD). He asked him to speak with (AD) as his health was being affected. (BE) told him that he should get some counselling and he (the witness) was just left to cope with the situation. He returned to work prior to the expiration of the medical certificate as he wanted to work. (BE) never enquired again as to how he was coping and (AD) said to him on his return that I believe you are stressed out.

On 27 October 2009 at approximately 5pm (JB) called him into his office and told him that he was being made redundant. He was told that he would be paid in full until 31 December 2009 and it was not necessary for him to work out his notice period. He was not advised that he should bring a representative with him to that meeting. He was shocked to be told that he was being made redundant. While he was aware of the general downturn in the construction industry he had no prior knowledge of the possibility of him being made redundant. This was the first occasion he had heard of redundancy. He had never been informed of the company's financial situation. There were no alternatives suggested by the company such as a reduction in hours or a reduction in salary. He would have been happy to accept a junior position in the company but this was not offered to him. He was paid his statutory redundancy entitlement and since his dismissal has applied for positions in Ireland, the UK and overseas. To date he has secured approximately seven months work.

Under cross examination he accepted that there was a drastic cutback in the general construction industry. He understood that the company was having cash flow difficulties and was very familiar with on the ground financial difficulties. He was aware that the cancellation of a project in Leopardstown in early 2009 created financial difficulties for the company and that in 2009 a number of employees were made redundant. The number of project managers in the company was also reduced. He accepted that his expertise lay in mechanical work and not electrical work. He also

accepted that (AD) provided him with a laptop computer to assist him in his work but denied that he was given the opportunity to attend computer courses. He accepted that his computer skills required improvement. He denied that he had any discussions with the company concerning the termination of his employment upon the completion of work on the Ballsbridge site. His contract with the company was not defined by specific projects, as he understood that he had a permanent contract with the company. He told the Tribunal that junior engineers did not have responsibility for the Blackrock site as employee (MM) had overall responsibility for that site. (MM) was a mechanical contracts manager and is not qualified in electrical work but did accept that he could carry out some electrical work.

### **Determination**

The Tribunal, having heard extensive evidence from both parties is satisfied that the claimant was unfairly selected for redundancy. The Tribunal, in particular notes the absence of any procedures in relation to the selection process and in that regard the Tribunal finds that the claimant was unfairly dismissed. The Tribunal is satisfied that there was no reasonable alternatives explored by the respondent, such as redeployment, a reduction in pay or a reduction in hours of work.

The Tribunal awards the claimant compensation in the sum of €60,000.00 under the Unfair Dismissals Acts 1977 to 2007 but reduces this amount by €5940.00 which the claimant has already received in respect of redundancy.

The amount of compensation therefore awarded to the claimant is €54,060.00.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

