

## EMPLOYMENT APPEALS TRIBUNAL

### APPEAL OF:

EMPLOYEE

- appellant

### CASE NOS.

UD182/11

PW42/11

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

EMPLOYER

- respondent

**under**

### **PAYMENT OF WAGES ACT, 1991 UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms P. McGrath BL

Members: Mr F. Cunneen  
Mr. J. Dorney

heard this appeal at Naas on 20th December 2011.

### **Representation:**

Appellant: In person

Respondent: In person

The determination of the Tribunal was as follows:-

These cases came before the Tribunal by way of appeals by the appellant against the recommendation of the Rights Commissioner under the Unfair Dismissals Acts, 1977 to 2007 (reference r-08991-ud-JC and the decision of the Rights Commissioner under the Payment of Wages Act, 1991 (reference r-088741-pw-10/JC).

### **Respondent's Case:**

The respondent is an engineering company linked to the building industry. The company had employed 14/15 employees. CF (a civil engineer) is Managing Director and FF was a company director. The appellant commenced employment in February 2001 and his role entailed running the sanitary services department. He was an excellent engineer.

In March /April 2007 a bounced cheque in the sum of €360,000.00 from a client resulted in having to let employees go. CF thought the economy would stabilise but unfortunately as time went on

more employees had to be let go in groups of three/four.

The company continued to lose money and a decision was taken to let ML and the appellant go in around May 2009. At that time the respondent entered into discussions with both ML and the appellant. A matrix was drawn up. The appellant applied for and was granted a six month career break. Had the appellant not applied for his career break he would have been made redundant. The appellant commenced his career break in June 2009 and was due to return to work on Monday 14<sup>th</sup> December 2009. The respondent kept everyone employed as long as they could and paid the necessary redundancy payments when the employees had eventually been let go. FF subsequently suffered ill health and left the company.

CF contended that the appellant lacked good communication skills and that the appellant during his tenure had been issued with a verbal warning.

All employees had to be made redundant except ROH. CF wanted to retain an employee with structural engineering qualifications as well as IT skills and took the decision to retain ROH. These skills were necessary if the company were to survive. The appellant's redundancy took effect on 14<sup>th</sup> December 2009.

### **Appellant's Case:**

The appellant, an engineer, commenced employment in February 2001 and had responsibility for environmental and drainage engineering. He got on well with his fellow employees. He worked a five day week until the company encountered trading difficulties and was required to go on a three day working week on 1<sup>st</sup> November 2008. He voluntarily agreed to this. The appellant acknowledged that there was a downturn in the economy.

On 28<sup>th</sup> May 2009 he applied for a six month career break which commenced on 11<sup>th</sup> June 2009 and this was granted with a resumption date of 14<sup>th</sup> December 2009.

The appellant contended that the criteria used in the selection process for redundancies in May 2009 should have been revised and updated at the time of his redundancy and that they were ranked in a subjective and unsupported manner. He had not been facilitated in any discussion in relation to the criteria used for his redundancy. He contended that the selection criteria were subjective and inadequate. He also contended that work was still being carried out by the company that he could have carried out.

He also contended that he could have become proficient in IT skills had he been provided with the necessary training. He believed drainage work was still being carried out by the company.

The appellant had never received any warnings during his tenure.

### **Determination:**

The Tribunal has carefully considered the evidence it has heard in respect of these claims.

The appellant comes before the Tribunal claiming that he was unfairly selected for redundancy when his employer made him redundant towards the end of 2009 following an extended period of unpaid leave which the appellant had taken.

The respondent makes the case that the consultant engineering company began losing business and revenue from the middle of 2007. There was a programme of redundancies implemented over the course of two years which ultimately left the company reducing its workforce from about fifteen to about seven. In and around May 2009 the Financial Director and the Managing Director made the decision to make redundant both the appellant and another Division Manager (ML) in circumstances where the Managing Director felt his own skillset and ability was equal to that of the two managers and the workload no longer merited the retention of three senior engineers. In looking at the redundancies that had to be made the Managing Director also considered the skillset of a more junior engineer RO'H who had an additional background in IT skills and qualifications which the MD felt he would require if the company was to have any chance of surviving into the future. In short the MD opted to make his two senior managing engineers redundant whilst at the same time retaining the said RO'H whose skillset he believed best complimented his own.

It is noted that RO'H continues to be employed by the respondent company and that all other members of staff including the Financial Director and the HR Manager have since left the company. Essentially, the MD and RO'H are the only employees of a greatly diminished company.

The appellant argues that he and not RO'H should have been kept on as he had the longer service and the senior engineering ability and that any deficit he might have had with respect to his computer skills could easily have been updated had the respondent given him an opportunity to upskill himself.

The respondent introduced a matrix which was purportedly used in May 2009, the time the respondent was looking at the three engineering positions.

The appellant says that this matrix was fundamentally unfair as it afforded him no opportunity to know what an employer was looking for. However, this misses the point that employers in redundancy situations very often have to make quick decisions based on the facts available to them. No element of the matrix presented was unfair or deliberately biased against the appellant and the scoring given did not demonstrate inherent unfairness. It is noted that had he not asked for a career break the appellant would have been made redundant in May 2009 as against December 2009 after the leave the appellant had taken.

Quite apart from the matrix that was used the Tribunal finds persuasive the arguments that the MD as a civil engineer wanted to retain an employee with structural engineering qualifications and knowledge as well as sound IT knowledge and qualification such that would best allow him, the MD, keep the company alive with as many disciplines as were heretofore available to him.

It is unfortunate for the appellant but the Tribunal accepts that the respondent employer acted reasonably and rationally in reaching the decision he did. It therefore follows that the appellant's redundancy was not unfair. The Tribunal upholds the recommendation of the Rights Commissioner under the Unfair Dismissals Acts, 1977 to 2007.

The Tribunal varies the decision of the Rights Commissioner and awards the appellant the sum of €4,760.00 under the Payment of Wages Act, 1991.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

