

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE – *claimant*

UD2454/2009

against

EMPLOYER – *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. J. Lucey

Members: Mr. W. O'Carroll
Mr. F. Dorgan

heard this claim in Limerick on 24th November 2011

Representation:

Claimant: Ms Colette Hannon BL instructed Ms Siobhan Murphy, O'Brien & Associates, Solicitors, Mill House, Henry Street, Limerick

Respondent(s): Ms Muireann McEnery Peninsula Business Services (Ireland) Limited, Unit 3, Ground Floor, Block S, East Point Business Park, Dublin 3

The determination of the Tribunal was as follows:-

Respondent's Case:

Mr. (PS) gave evidence. He is the Managing Director of the respondent which was established ten years ago in the mid-west. It is a packaging business and its biggest customer was a multi-national business. In 2006, the respondent started to enter other markets but in 2009, the multi-national still accounted for 90% of its business. The key function of the business is

making foam for packaging using granules which are heated. One part of the business makes the foam, another part stamps or shapes the foam and the final area is welding the end caps. The claimant worked in the stamping area.

In 2008 the respondent had 160 staff. At a staff meeting in October 2008, they informed staff of 30 redundancies and used interpreters for staff with less English. The multi-national had established a plant in another European Country and the respondent had established a business in that Country near the respondent. Staff could apply to work there if they wished.

In January 2009, the multi-national formally announced that they were moving their manufacturing plant to Europe. This had a major impact on the business. 2009 was mayhem, there was many comings and goings. The wind down happened on a week by week basis. All layers of the respondent were impacted. All staff knew where they stood and it was only a matter of when. In May 2009, the claimant was redeployed to another area within the respondent. He suffered an injury and was out of work from the 25th June to the 26th August. The respondent admitted responsibility and the claimant received compensation for his injury. While the claimant was out on sick leave the wind down continued and more and more staff were being let go.

Staff were selected on the basis of where they worked and the claimants name would have been on the list of staff to be let go. While the claimant was out sick, he came to the plant to discuss his injury. A decision was made to make the claimant redundant. He was contacted and met with the Accountant. The Accountant would have given the claimant his notice of termination. On the day the claimant was let go, two staff with eight year's service each also finished. There was a staff member with less service than the claimant who did stay, but he had more experience than the claimant. There were no vacancies for the claimant to fill.

Under cross examination (PS) said he never told the claimant his job was safe. The injury was between the claimant and the insurance company, the respondent acknowledged it was their fault. The respondent was sending 18 trucks a day to the multi-national which had been reduced to 1 per day. He said the respondent had sustained losses in 2009 and 2010 and were fighting for survival in 2011. They currently employ 30 staff and even today the staff know it's a week by week, month by month basis.

Claimant's Case:

The claimant is a Polish national and was redeployed at the beginning of May 2009. He wasn't told about the cuts. He went to the meeting in October 2008, but after that no other meetings were held. He had an accident and went sick. At the meetings in the plant a sum of compensation for his injury was mentioned which he didn't agree with. (PS) was present at those meetings and the claimant was told once his injury was healed he would go back to his position. On the 14th August 2009, his Solicitor sent a letter to the respondent in relation to his injury and compensation claim. At his final meeting he was told he had to be let go. The Supervisor said it was not up to him, it came from (PS). The claimant was surprised and disappointed. He was led to believe he would be back working in 2 or 3 weeks. He said he was let go because he did not agree with the compensation figure offered by the respondent. There was other staff left with less service than he had, and they were not let go.

Under cross-examination he agreed the multi-national contract had a major impact on the respondent. He was redeployed because he was a good employee. At the meetings with (PS)

he was asked when he would be returning to work. He was not aware of other redundancies on the same day he finished.

Determination

The Tribunal having carefully considered the evidence adduced at the hearing finds that the claimant was dismissed by reason of redundancy even though the claimant had insufficient service to qualify for a redundancy lump sum payment.

The Tribunal is satisfied that the respondent business was struggling to survive and it proved necessary to make a large proportion of its workforce redundant, despite the best efforts of the respondent. The claimant was dismissed by reason of redundancy and his selection was not unfair. Accordingly the claim under the Unfair Dismissals Acts, 1977 to 2007 must fail.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)