

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
EMPLOYEE

*-Claimant*

CASE NO.  
UD118/2010  
RP168/2010

Against

EMPLOYER *-Respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms P. McGrath B.L.

Members: Mr P. Pierson  
Mr O. Nulty

heard this claim at Mullingar on 13th September 2011 and 7th December 2011

#### **Representation:**

Claimant: Ms. Niamh McGowan B.L. instructed by  
Bruce St. John Blake & Company, Solicitors, Ross House,  
Merchants Road, Galway

Respondent: Mr. Gerard Connolly, Matheson Ormsby Prentice, Solicitors,  
70 Sir John Rogerson's Quay, Dublin 2

#### **The determination of the Tribunal was as follows:-**

Respondent's Case:

It was the evidence of the General Manager that in 2008 the respondent company suffered a decline in profit and revenue due to a variety of factors. A number of cost directives were given in late 2008 and the company also engaged with employee groups regarding productivity and changes to work practices. The company also had plans to outsource the servicing of a number of types of printing machines, namely the 4112, 4110 and the entire 250 range. The claimant was employed as a service engineer and he mainly worked on these machines.

In January 2009 the company informed the union that an announcement would be made in relation to restructuring and redundancies. Meetings were also held with staff at that time. The claimant had been absent on sick leave from November 2008 but the Human Resources Manager wrote to

the claimant and provided him with the same information that the staff received at the meeting.

A number of employees came forward seeking voluntary redundancy but due to the company's business structure, management had to ensure that the company retained the key skills necessary to ensure service to its customers. The company negotiated with the union during February 2009. The union requested the company to accept as many of the voluntary redundancies as possible. The company selected four employees for redundancy on a voluntary basis.

An agreement was reached that the remaining redundancies would be based on the number of hours engineers spent on the machines being outsourced. As the claimant's percentage was the third highest, his position was one of those selected. Any engineers due to retire in the following four years were excluded from the selection process as it would have cost the company more to pay their redundancy than to retain them until retirement.

The company was open about the process and documentation pertaining to selection was shown to the union at a meeting on the 23<sup>rd</sup> February 2009. The General Manager acknowledged that the union had asked the company to consider a process of last in first out but the company could not utilise this process as it needed to retain certain skill sets.

The claimant was offered a full redundancy package. The company met with him on the 1<sup>st</sup> July 2009 regarding the collection of an ex-gratia payment of approximately €160,000. However, the meeting became a discussion when the claimant raised the issue of his wish to pursue a disability pension.

During cross-examination the witness confirmed that one employee (Mr. J) had sought to be made redundant. This was refused by the company due to his skillset and geographical location. It meant that Mr. J mainly covered the Galway area which had large volume customers with a different machine range than the claimant. It was put to the General Manager that the claimant had requested to be trained on such products but he could not say if this was the case.

It was put to the General Manager that the claimant had raised the issue of a difficulty with his work due a problem with his back and that he had requested that a simple matter be rectified. The General Manager replied that the company considered health and safety very seriously and had corresponded with the claimant on that matter.

The National Service Manager gave evidence that he compiled the chart of figures concerning the hours worked per engineer on the machines that were going to be outsourced. He used a date range of 1<sup>st</sup> July 2008 to 31<sup>st</sup> December 2008 but discounted the period of time the claimant was on sick leave. The first person selected spent 79.4% of hours on the affected products and the second person selected spent 65.3% of their time on them. The claimant was the third highest with 58.23%.

During cross-examination the National Services Manager stated that the claimant worked on the affected products almost 50% more than Mr. J.

Giving evidence the Human Resources Manager (herein after referred to as HRM) confirmed that she had sent the claimant the information on restructuring on 15<sup>th</sup> January 2009. She had attempted to contact the claimant on numerous occasions by telephone and email but when there was no

response she sent letters to his home by courier. Subsequently, the claimant requested a copy of the data used in the selection process and HRM forwarded this information to him on the 15<sup>th</sup> May 2009.

During cross-examination she confirmed that the claimant had refused to accept the ex gratia payment offered by the company, as he thought it would affect his early retirement pension application. On the 1<sup>st</sup> July 2009 he did sign an acceptance of the statutory amount of €39,000 approximately.

#### Claimant's Case:

The claimant's colleague Mr. J gave evidence that he was based in Castlebar but worked in Donegal, Leitrim, Sligo, Roscommon and Galway. He disputed that his work was mainly in Galway as put forward by the respondent. Mr. J stated that his role was the same as the claimant's except that he serviced one additional type of machine at a site Athlone. To train the claimant on this product would only have taken 4-5 weeks.

When he heard that there were to be redundancies in the company he thought that his position would be chosen, as he was idle a lot of the time due to having a small workload. Despite not meeting the criteria he applied for voluntary redundancy and even offered to renegotiate a lower package but these offers were declined by the company.

During cross-examination he accepted that he worked less hours on the machines to be outsourced than the claimant but he stated that geographical location should have been taken into account as the greatest amount of machines remaining were in the greater Athlone and Galway area.

It was the claimant's evidence that he was absent due to illness from the 24<sup>th</sup> November 2008 to the time that he was made redundant. The claimant did not feel that a fair decision had been made in selecting his position for redundancy. One of his colleagues had requested redundancy in the claimant's place and even though they were in similar positions the company did not accept this. The claimant felt another element formed part of the decision as he was unable to carry out his job due to the fact that the company would not provide him with equipment to assist his medical condition.

During 2008 there were discussions about a new car policy and the claimant had attended the company doctor in relation to this matter as it was clear from meetings with management that the company intended to downgrade company cars. The claimant was concerned about this and he attended at the company doctor to have confirmation for the company that he required an arm rest and lumber support as had been available in the other cars.

Initially the claimant enquired about having these items in the new car and he was informed that the cars were basic models. The employees were told that these cars were only a temporary measure so the claimant decided not to make an issue about it and waited to see if he could manage in the short-term. He received the new but more basic model on the 23<sup>rd</sup> October 2008

Some weeks later on the 11<sup>th</sup> November the claimant informed his manager that as there no support in his car seat and no arm rest; it put pressure on his lower back and down his leg. In addition to this there was no cargo net between the front and back of the car. The manager responded to the

claimant that the car met all health and safety requirements. As a result of this issue the claimant attended a conciliation meeting in the Labour Relations Commission on the 14th November 2008. The claimant was assured that the matter would be rectified but this did not occur and two weeks later the claimant was absent on sick leave. He believed the other employees received new cars after he was made redundant.

He received formal notification of redundancy at the end of April. He stated that he had accepted a number of telephone calls in relation to the redundancy situation. When the claimant saw the selection criteria he noted that he was absent on sick leave at the busiest time of the year. He highlighted with HRM that he felt the fact he was on sick leave put him in the frame and he raised the issue that he had not been sent the figures of how his position had been selected. This made the claimant feel unhappy and distrustful of what was taking place. The redundancy date was effective from the 23<sup>rd</sup> June 2009, but he had not yet met anyone from the company face to face. In reply to questions from the Tribunal, the claimant confirmed that he had not requested a meeting with the company. He subsequently met the company on the 1<sup>st</sup> July 2009 in relation to the issue of an invalidity pension scheme.

**Determination:**

The Tribunal has carefully considered the evidence adduced. The claimant has made the case that he was unfairly selected for redundancy at a time when the respondent company was being forced to re-structure, the cause being an accepted downturn in business.

The Tribunal is satisfied that the company had clear and unambiguous selection criteria which were well known to all the employees including the claimant.

The claimant was selected for redundancy solely because his area of expertise lay in those machines which the respondent company intended to outsource. No other criteria including anything relating to disability or company cars played a factor. The Tribunal finds he was not unfairly dismissed.

The Tribunal notes that a statutory payment has been made under the Redundancy Payments Acts, 1967 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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