

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

-Claimant

CASE NO.
UD1369/2010

RP1867/2010
MN1323/2010

against
EMPLOYER

-Respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms O. Madden B.L.

Members: Mr C. McHugh
Mr F. Dorgan

heard this claim at Carlow on 3rd November 2011

Representation:

Claimant: Ms Michelle Treacy, O'Flaherty & Brown, Solicitors,
Greenville, Athy Road, Carlow

Respondent: A director of the company

The determination of the Tribunal was as follows:

The respondent company is an electrical contracting firm. The claimant was employed there from the time of November 1996. His position was selected for redundancy in late 2009. The claimant was paid a redundancy lump sum but disputed that his position as a general operative was fairly selected.

A director of the respondent company gave evidence that it was necessary for the company to implement redundancies. He met with the union in this regard and it was his understanding that the selection process for the redundancies was agreed with the union. Employees of the same grade were made redundant using a process of last in, first out. Seniority, skills and qualifications were also taken into account.

At the height of its business the company employed 70 employees. The work was divided into three different divisions. One division related to street lighting and there were 15- 20 people

employed in this division comprising of general operatives, labourers, digger drivers and an electrician. The claimant was employed in this division for the last eighteen months of his employment.

The second division was the industrial and commercial division and there were a further 15- 20 people employed there. The commercial work is on-going but only five employees now work in that division including two qualified electricians.

A further 10 -15 employees worked in the third division which was residential housing. The claimant was employed in this division for a period of time. He performed first fixes and learned this role over a number of years. There are currently two employees working in this division, one of which is the claimant's former line manager. The line manager was the most qualified person in the division. The other employee is an apprentice.

The director outlined that Employee D was retained in the street lighting division after the claimant even though he had shorter service than the claimant. However, Employee D holds a HGV license to drive a cherry picker and therefore he was more qualified than the claimant. The director could not offer this position to the claimant, as he did not hold such a license.

The company now has approximately nine employees and has moved to smaller premises. Some of the nine employees work a three-day week. There is one part-time member of staff in the office now, whereas there were nine office employees.

When the director informed the claimant that his employment was terminating due to redundancy, the claimant indicated that he would be seeking more than statutory redundancy.

During cross-examination it was put to the director that the claimant told him he held a HGV license and that he had sought to be placed on the cherry picker. The director replied that the claimant had never produced such a license nor raised such an issue through the union. In any event the company did not require a second cherry picker driver. The claimant had also informed the director that he was disinterested in working away from home as some of the street lighting crew did. The director refuted that the company had indicated that subsistence would be cancelled and that due to the claimant's objection about this he had terminated his employment. The director stated that a significant number of employees had been made redundant by that time. He stated that the claimant was made redundant as he was next in line to be made redundant in relation to his skills.

It was the claimant's evidence that there was a disagreement between the employees in the streetlighting division and the director concerning subsistence. The director had called a meeting and informed them that the company may not be in a position to pay subsistence going forward.

At a second meeting concerning this issue the director stated that the company could not afford to pay subsistence. The director provided the claimant with a leaflet concerning redundancy. The claimant said that he was not interested in redundancy but the director said that he would be let go shortly.

Some days later the claimant was asked to attend the office. There he met with a union representative who stated that there was a redundancy situation in relation to his position. He told the claimant that they could argue this with the company but that the company had to let him go

because they no longer had a job for him. The claimant felt he had been selected for redundancy because he had objected about the issue of subsistence. He was not shown a matrix or other written document showing the process by which his position had been selected. He recalled that in or around the time that he was made redundant he had driven a cherry picker for the company and he had requested training,

In reply to questions from the Tribunal, the claimant confirmed that with the exception of Employee D there were no other employees with shorter service retained after he was made redundant. He accepted that staff numbers had reduced significantly by the time he was made redundant.

Determination:

The Tribunal considered the evidence adduced by both parties and in particular the evidence that the claimant's union was consulted on, and agreed with, the selection process that the respondent company intended to utilise. Indeed, the claimant agreed that the selection process was, as outlined by the director of the company. The Tribunal is satisfied that the respondent company retained staff on the basis of the skills required to try and ensure the survival and viability of the company. In so doing, there were no grounds for which the respondent could retain the claimant over any other of the remaining employees. The Tribunal finds that the claimant's position was fairly selected for redundancy. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007, fails.

As it was agreed between the parties that the claimant was paid his redundancy entitlements, the Tribunal dismisses the claim under the Redundancy Payments Acts, 1967 to 2007.

The claim under the Minimum Notice and Terms of Employment acts, 1973 to 2005, was withdrawn at the outset of the hearing.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)