

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NOS.

EMPLOYEE– *claimant*

UD2097/2010

RP2851/2010

MN2046/2010

against

EMPLOYER – *respondent*

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr P. O’Leary

Members: Mr F. Moloney  
Mr G. Whyte

heard this claim at Dublin on 20<sup>th</sup> February 2012

Representation:

Claimant: Ms Ciara O’Duffy BL instructed by Keans Solicitors,  
2 Upper Pembroke Street, Dublin 2

Respondent: In person

The decision of the Tribunal was as follows:

#### **Respondent’s Case**

The general manager gave evidence. In 2010 the business lost a major client. 60% of the business was lost. Due to recessionary pressure other clients were buying less. Redundancies were required. Five people, one from each department, were made redundant. The claimant is a carpenter who worked on one off special orders requiring specialist skill. The work done by the claimant vanished. If there was work for him to do the general manager would employ the claimant.

The people made redundant were chosen because those jobs were no longer there. From April 2010 the production staff members were put on a 3 day week. On 8 July 2010 there was an open meeting with production staff. The options were to reduce wages or make redundancies. There was no agreement on a reduction of wages.

On 22 July 2010 the claimant and 4 others were made redundant. The claimant was given no notice

that his job was at risk. No alternatives were discussed with the claimant. No one discussed with him the reasons he had been chosen for redundancy. The general manager felt that there were no alternatives. The claimant was a highly skilled and highly paid employee but the work had gone. The general manager did not consider offering him a less skilled position. The general manager knew that the claimant and his colleagues went to a union representative to discuss their rights.

The claimant did not have a contract of employment. There was no employee handbook or grievance procedure.

The production director gave evidence. Because of the downturn costs had to be cut. The production staff members were asked to agree a 15% pay cut and they said no. The company could not survive without a cut in wage costs. Redundancies had to be made.

The staff members made redundant were chosen before the meeting. They looked at the work remaining. It was very simple the skilled work done by the claimant was gone.

The production director, the HR person and the design director met the people being made redundant. They did not receive notice of the meeting. They were paid in lieu of notice and left that day. No alternatives to redundancy were considered. It was a simple matter of there being no more work. The production director did not feel that the claimant could do the job of any of the production staff members not made redundant. The production manager was not aware that the claimant had joined a union.

### **Claimant's Case**

The claimant gave evidence. He worked for the respondent for 17 years. He has not found work since. On 22 July 2010 he was called to a meeting at 4.30pm just after the working day finished. The meeting lasted 7 minutes. The HR person opened the meeting by saying bad news you are being let go. Then she said we are taking no questions just sign the form and take the envelope. He was paid 8 weeks' notice. He asked to work his notice but was not allowed.

The claimant had been reluctant to accept a pay cut. The production department was already on a three day week. He had no reason to believe that the office staff had taken a pay cut of 20% or that the directors had taken a pay cut of 50%. No alternatives to redundancy were suggested.

A former colleague of the claimant gave evidence. He was let go on the same date as the claimant. There was no notice of the meeting and no opportunity was given to respond. Four colleagues went to meet with a union representative. The 3 who joined the union were let go while the one who did not was not let go.

### **Determination**

The Tribunal carefully considered the evidence adduced. The Tribunal accepts that the respondent's business was under considerable financial pressure following the loss of a significant client in 2010. When the employees in the production department declined to agree to a pay cut, the respondent could only cut the wages bill by making redundancies.

However the redundancies were affected without resort to any recognizable procedures. The claimant was not put on notice that his position was at risk of redundancy. He was not given notice of the meeting at which he was made redundant. No explanation of the criteria under which he was

chosen for redundancy was given to the claimant. Neither was the claimant given the opportunity to put forward proposals for maintaining his employment. The Tribunal finds that the failure to follow fair procedures in the terminating of the claimant's amounts to an unfair dismissal. The claim under the Unfair Dismissals Acts 1977 to 2005 succeeds and the claimant is awarded the sum of €25,000.00.

As the Tribunal allowed the claim under the Unfair Dismissals Acts 1977 to 2007, the claim under the Redundancy Payments Acts 1967 to 2007 is dismissed because these acts are mutually exclusive.

The claimant accepted that he was paid minimum notice and the claim under the Minimum Notice and Terms of employment Acts 1973 to 2005 was withdrawn.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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