

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE

UD771/2009

-claimant

RP850/2009

MN792/2009

WT335/2009

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
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. O'Connor

Members: Mr. P. Casey

Mr D. Mc Evoy

heard this claim at Killarney on 29th April 2010
and 9th December 2010

Representation:

Claimant: Mr. Coman Larkin solicitor, Downing
Courtney & Larkin, Solicitors, 84 New Street,
Killarney, Co Kerry

Respondent: Mr. Dan O'Connor, Terence F Casey
& Co, Solicitors, 99 College Street, Killarney, Co Kerry

Background:

The respondent is an accountancy and registered auditor firm. The claimant contends that he was unfairly selected for redundancy and therefore that he was unfairly dismissed. He contends that others persons could have been selected in his stead.

The Respondent contends that this was a proper and correct redundancy situation. The Respondent company is an amalgamation of two previous firms that had been independent, as a result of the merger the claimant's position was no longer available and he was lawfully redundant. The Respondent also contends that the claimant was not an accountancy assistant as

he described himself on the claim form.

From the outset of the hearing the claims under the Redundancy Payments Acts, 1967 to 2007, the Organisation of Working Time Act, 1997 and the Minimum Notice And Terms Of Employment Acts, 1973 To 2005 were withdrawn by the claimant's representative. The claimant had been paid his redundancy lump sum payment.

Respondent's case:

The Respondent gave evidence to the Tribunal. He met the claimant on 20th February 2009 and told him that he had no option but to make him redundant; They had a surplus (of staff) in reception. He asked the claimant if he would like to keep working (his notice period) and the claimant declined and did not return to work. They paid him his holiday pay. They paid the claimant his notice pay up to 06th March 2009.

The witness explained to the Tribunal the history of the company and that there was a merger in May 2007. There had been three reception areas one which had been in the other business and now there was one reception area.

The witness gave extensive evidence as to the money that was put into the business and borrowing of same. Also that they had to cut their fees so as to keep their clients. Also that they were in arrears with the Revenue Commissioners.

A decision was made to cut costs. He looked everywhere at options to cut costs. They had three staff at reception. These staff did more than just answer phones. He felt that there was surplus to requirements. He decided on Last-in-first-out (LIFO) for selection for redundancy.

One person on reception had eight years service one had seven years service and the claimant had two and a half years service. When asked if this was the main factor in selecting for redundancy the witness replied that it was the only factor. There was no personal vendetta against the claimant. He lived in the same area as the claimant. He offered to give the claimant a good reference. He did not want to let the claimant go. No one else became a receptionist.

The witness was asked if the claimant did pay roll and he explained that every member of staff was encouraged to do courses. The claimant did not meet clients or bill clients; the reception staff or the secretarial staff did not meet clients or bill clients.

The claimant was given a cheque for the redundancy amount and it was cashed.

Cross-examination:

Regarding the claimant's position at reception the witness explained that the claimant told him that he was stressed, the claimant missed considerable work due to headaches. He placed the claimant in an easier position. The claimant had felt that he was pressurised and spoke to him. He then put the claimant on reception and the claimant told him that he was happy at the reception. The witness re-iterated that the claimant was always a receptionist.

Claimant's case:

The Tribunal heard evidence from the claimant. He was told that he would be a trainee

accounts assistant. His contract states that his first task was to do bank reconciliations for clients. He worked on VAT returns. He did not have accountancy experience when he was taken on in the respondent company. He felt that he was learning and was “getting there”. He felt that his work was “up to scratch”.

In June of 2008 the owner (MC) asked him to work at the reception area for a few weeks. He would not have agreed to move to reception if he had known that his work would change.

He could have done the work that others did in the company. There were other workers there that had less service and were doing similar work as he did such as bank reconciliation VAT returns.

Cross-examination:

The claimant was asked if he had “little” knowledge of accountancy when he commenced and he replied “none at all”. He agreed that another three employees had qualifications and that he was not in a like category as them.

Determination:

The Tribunal unanimously determined that the claimant’s position was redundant. It is clear to the Tribunal that the business was in difficulty and the termination was by virtue of redundancy.

The claimant was paid his redundancy entitlement. The claim under the Unfair Dismissals Acts 1977 to 2007 is dismissed.

From the outset the claim under the Redundancy Payments Acts, 1967 to 2007 was withdrawn, accordingly the claim under the Redundancy Payments Acts, 1967 to 2007 is dismissed.

From the outset the claim under the Organisation of Working Time Act, 1997 was withdrawn, accordingly the claim under the Organisation of Working Time Act, 1997 is dismissed.

The claimant agreed in cross examination that he chose not to work his notice, accordingly the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

