

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:  
EMPLOYEE- *claimant*

CASE NO.  
UD1554/2011

RP2069/2011

against  
EMPLOYER- *respondent*

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms P. McGrath BL

Members: Mr. N. Ormond  
Mr F. Barry

heard this claim at Dublin on 23rd January 2012

Representation:

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Claimant(s) : Mr Neil McNelis, Neil McNelis & Co, Solicitors, The Square,  
Miltown Malbay, Co Clare

Respondent(s) : Mr. Alastair Purdy, Purdy Fitzgerald, Solicitors, Kiltartan  
House, Forster Street, Galway

The claim under the Redundancy Payments Acts 1967 to 2007 was withdrawn by the claimant's representative during the course of the hearing.

**Respondent's Case**

The respondent is a large retail outlet operating a number of stores countrywide. The claimant's line manager known as (SOL), electrical manager of the respondent's Rathfarnham store, gave evidence that there are four departments in each store managed by separate managers. He told the Tribunal that the claimant was initially employed at the respondent's warehouse premises in Parkwest and was transferred to the Rathfarnham store in January 2011. He was employed as a credit claims clerk in the warehouse and continued to carry out the same duties following his transfer to Rathfarnham. He was transferred to the Rathfarnham store as he could be managed on a hands on basis in the store. This was not possible when the claimant was working in the warehouse. He was responsible

for returning faulty goods to suppliers. As a credit claims clerk he had responsibility for the electrical and furniture departments of the Rathfarnham store. If the claimant was absent from work his duties were carried out by existing employees within the store who were proficient in his work.

The company carried out a strategic review at the beginning of 2011 whereby the company looked at achieving cost savings measures. Following this review the witness, along with the furniture manager met with the claimant on 21 June 2011 informing him that his position was at risk of redundancy. He was told there may be alternative internal vacancies available and he would be informed of those vacancies during the week at a follow up meeting. The meeting on 21 June 2011 was an 'at risk' meeting and no decision was made at that stage regarding the claimant's position. The witness had no further contact with the claimant following the meeting of 21 June 2011 as the claimant did not return to work following that meeting.

Under cross examination he accepted that the claimant was initially hired as a warehouse operative and then moved to the position of credit claims clerk. As a credit claims clerk the claimant liaised with suppliers in respect of faulty goods and did his job to the required standard. The witness denied that he instructed the claimant to train other employees in his area of work. He denied that the claimant was dismissed because he was the highest salary earner. He told the Tribunal that the claimant would have had the opportunity to increase his wages had he applied for other internal job vacancies. He accepted that those job opportunities were not presented to the claimant at the 'at risk' meeting on 21 June 2011. The witness together with the furniture manager made the decision to make the claimant's position redundant. A total of approximately 18 employees worked in the electrical and furniture departments. The claimant's position was unique in that he was the only credit claims clerk employed in the store. He could not confirm to the Tribunal if a criteria exists within the respondent company concerning the implementation of redundancies.

The Human Resources Manager (MD) gave evidence that the company operates 14 retail stores countrywide. The company was incurring substantial losses on an ongoing annual basis from the year end 30 June 2008 and documentary evidence was produced to the Tribunal showing these losses. Following the appointment of a new CEO in February 2010 the company carried out ongoing strategic reviews to try and stem the losses. As a result of these reviews approximately 25 employees were made redundant and two warehouses were closed. The claimant was hired initially as a credit claims clerk and while he was located in a warehouse he never worked as a warehouse operative. She became involved in the claimant's redundancy after the 'at risk' meeting on 21 June 2011. She met with the claimant on 30 June 2011 and made him aware of other alternative job opportunities which existed within the company. The claimant was not interested in those alternative positions and did not apply for the positions. An ex-gratia payment plus redundancy was also offered to the claimant but he declined to accept the ex-gratia payment. She wrote to the claimant on 6 July 2011 informing him that he would be made redundant on 18 July 2011 and this concluded her involvement in the matter. She confirmed that the claimant's position was the only position made redundant at that time.

Under cross examination she accepted that the claimant's contract of employment confirms his appointment as a warehouse operative commencing on 21 April 2008. However he never carried out the duties of a warehouse operative. She stated that the claimant's position was unique and no other position existed in the company which was comparable to the claimant's position. She accepted that two other employees work as credit claims clerks but they have responsibility for three stores. The company does not operate a transfer system between departments in the stores. She confirmed that employees have a right to appeal decisions to the CEO and the claimant was not made aware of that right in the decision to make him redundant.

The furniture manager (MF) gave evidence that the claimant reported to him and (SOL). He gave evidence that he requested the claimant to train an employee, who was employed as a manager in training, in the credit claims procedure. This was done as part of the normal training process and an e-mail dated 7 July 2011 confirming this request was opened to the Tribunal. He could not recall if he requested the claimant to train other employees in his duties. He confirmed that he had no issues with the claimant's work performance but his role was no longer really necessary. He made the decision along with (SOL) to make the claimant's position redundant. He did not believe that he told the claimant that he had a right to appeal the decision. The claimant's position has not been filled since he was made redundant and he has no knowledge of the company hiring agency staff in the past three years.

### **Claimant's Case**

The claimant gave evidence that he was hired as a warehouse operative following a successful interview process with the respondent company in April 2008. He had previous experience as a warehouse operative and his location with the respondent company was in a warehouse premises in Parkwest. This location suited him as it was close to his home. He was given a contract of employment and completed a probationary period. Over a period of time his job progressed to operative/credit claims clerk. He continued with general operative duties driving the forklift and moving stock but also did the duties of a credit claims clerk. There was no defining moment when his position changed to a credit claims clerk, it just happened over time. There was no change to his salary when he took on the duties of credit claims clerk. He began to develop a relationship with suppliers and in so doing saved the company up to €100,000.00 by returning faulty goods to suppliers. He was also asked to train other employees in his duties as credit claims clerk.

In April 2010 he took on the duties of the Rathfarnham store while retaining his duties for the Carrickmines store whilst at same time operating from the warehouse in Parkwest. He was paid extra for this increased workload but this extra payment ceased after a number of weeks. He also asked (SOL) for a new contract of employment but this was never provided to him. He continued to move stock from the warehouse to the Rathfarnham store at this time driving the company van on numerous occasions. In January 2011 he was transferred from the warehouse to the Rathfarnham store. He was not happy with this move as the Rathfarnham location did not suit him and he informed (SOL) of this. Eventually his hand was forced and he transferred to the Rathfarnham store. He received an enhanced payment for this.

He was called to meeting on 21 June 2011. He believed that he was doing a fantastic job and expected to be told that he was being promoted. When he was told that there was a possibility that he would be made redundant he was shocked. He asked if he could transfer to somewhere else or move back to the warehouse but was told that there was nothing to offer him. He met with the Human Resources Manager, (MD) later and she confirmed that there was a sales position available in Waterford. He later injured his back at work and was absent from work. He submitted medical certificates for this absence. At the time he was made redundant he was trying to purchase his home under the tenants purchase scheme but he is no longer in a position to do this as he must be in employment to purchase his home. Since his dismissal he has sought alternative work but has been unsuccessful to date.

Under cross examination he did not accept that he was employed as a full time credit claims clerk at the time of his redundancy. When he first commenced employment in the warehouse he was doing warehouse duties picking and moving stock to the stores. He accepted that there was no decision

taken to make him redundant at the meeting on 21 June 2011. He could not recall if he reported for work in the days immediately subsequent to 21 June 2011. He believed that he was absent on sick leave from 21 June to 30 June. He met with (MD) on 30 June 2011 where an enhanced ex-gratia payment was offered. He did not accept the offer. He accepted that he was offered an alternative sales position in Waterford but this was at a reduced salary and it was not feasible for him to accept that position. He was not trained in sales and was not prepared to accept the sales position. He asked to transfer back to the warehouse but this request was not granted. He was not informed that he could bring a witness to the 'at risk' meeting on 21 June but was told that he could do so at the subsequent meeting with (MD). He was not given the option to appeal the decision to a higher level.

## **Determination**

The Tribunal has carefully listened to the evidence adduced. The claimant says he was unfairly dismissed in circumstances wherein he was called into a meeting by his two direct managers (SO'L and MF) at which it was explained that his position as credit claims clerk for the furniture and electrical departments in the Rathfarnham retail shop was "at risk" of being made redundant.

The claimant states he was totally taken by surprise by the fact that this "at risk" meeting had taken place. He had had no previous intimation that redundancies were being contemplated in the shop and no idea that his position was being considered for redundancy in circumstances where he believed the position was integral, revenue saving and that he had performed the position to the best of his abilities.

The claimant had been taken on as a general warehouse operative in 2008 on a basic salary of circa €29,000.00. The claimant's basic salary remained the same until his departure in and around July 2011. It is accepted that the claimant had general warehouse skills when he was taken on insofar as he had operated forklifts and pickers and could do stock takes and rack selections. It seems that whilst working in the actual warehouse the claimant's day to day activity organically grew into that of a credit claims clerk, ie, the returning of faulty goods to manufacturers. The claimant said he had a natural talent for this role as he developed good relationships with the manufacturers with whom the company dealt.

It was primarily in this role that the two managers aforementioned sought the claimant to become part of their team. Therefore in and around April 2010 the claimant (whilst continuing to work in the warehouse) was in fact carrying out the function of credit claims clerk for the two general managers in the furniture and electrical departments of the Rathfarnham retail branch. Ultimately he was in fact transferred to operate from the Rathfarnham branch on a full time basis. The claimant understood that an "at risk" meeting was in fact an advance warning of being told of the inevitability of being made redundant. There was no evidence to support the idea that a person "at risk" was ever kept on.

For the Tribunal the most surprising aspect of this case is the lack of formal and proper HR management. The respondent is a large company with a large workforce and there should be some obligation on the company to have proper HR procedures. The Tribunal was not presented with any evidence by the respondent to show how the decision to make this single person redundant was reached. It is recognised that the company was entitled to implement redundancies and indeed faced with the losses they appeared to have been dealing with perhaps redundancies were inevitable.

However, the claimant appears to have been selected without any correct or proper assessment of

what his skills, abilities and service might have been. No attempt was made to look at a selection of employees with comparative skill sets to see who should more fairly be made redundant. No matrix was prepared and no consideration was given to redeployment.

The Tribunal cannot know whether the claimant would have been made redundant had a fair and reasonable assessment of the workplace been carried out. The Tribunal must however satisfy itself that the employer has acted fairly and reasonably in its selection of this single person for redundancy. The Tribunal is not so satisfied. In particular the Tribunal was never shown where the company handbook set out the purpose of implementing a programme of redundancy in this company.

More telling of all perhaps was the failure of the employer to notify the claimant of his right of appeal.

In conclusion the Tribunal has to find that the claimant was unfairly dismissed and awards the sum of €24,000.00 compensation under the Unfair Dismissals Acts 1977 to 2007.

The Tribunal notes that a payment of statutory redundancy has been made and the award under the Unfair Dismissals Act is in addition to that payment.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

