

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE

CASE NO.
UD1071/2011

against the recommendation of the Rights Commissioner in the case of:

EMPLOYER
Under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. D. Donovan BL

Members: Mr. J. Goulding
Mr. J. Jordan

heard this appeal in Dublin on 10 January 2012

Representation:

Appellant(s):

Ms. Bernadette Thornton, SIPTU
Membership Information & Support Centre,
Liberty Hall, Dublin 1

Respondent(s):

Mr. John Barry, Management Support Services (Ireland) Limited,
The Courtyard, Hill Street, Dublin 1

The determination of the Tribunal was as follows:-

This case came to the Tribunal as an employee appeal against Rights Commissioner Recommendation r-081834-ud-09 under the Unfair Dismissals Acts, 1977 to 2007.

Unfair selection for redundancy was alleged after employment with a contract cleaning company from October 1981 to June 2009.

The respondent contested this stating that the appellant, at the time he was made redundant, had been

responsible for a team of operatives but that the respondent had experienced substantial losses in all areas of its business and within the Industrial Division revenue had decreased by 19% in 2008. In June 2009 all employees in the Division were placed on protective notice.

A strategic review of the business was undertaken. Restructuring of the business was proposed in all sectors nationwide in order to ensure the viability of the company. A number of managers in the company and employees from the Industrial Division were made redundant. A new management structure was proposed with fewer management positions. The position of Foreman and Area Manager were made redundant due to a reduction in the requirement for supervision. The appellant was employed as a foreman.

The appellant was informed his position would be made redundant on 12 June 2009. He was offered the alternative position of charge-hand but refused this. On 19 June his trade union appealed on his behalf. A HR manager from the respondent offered to meet the claimant and his representative to discuss the grounds of the appeal but this offer was not accepted.

It was submitted on behalf of the respondent that the appellant's dismissal had not been unfair because it had resulted from the redundancy of the employee and whose position had not been replaced.

At the Tribunal hearing it was contended on behalf of the appellant that the respondent was claiming that the appellant had been offered WG's job but that the circumstances and working conditions surrounding the offer were disputed. The comparators (from the point of view of assessment of fairness of selection for redundancy) were FL and WG.

Determination

Having considered the evidence adduced at the hearing the Tribunal finds that due to a downturn in its business the respondent had a need to make some employees redundant. The Tribunal finds that the respondent was justified in retaining FL rather than the claimant on the basis of skills. However, the Tribunal does not find that the respondent was justified in retaining WG rather than the claimant and the Tribunal is not satisfied that the claimant was offered WG's position. Accordingly the claim under the *Unfair Dismissals Acts 1977 to 2007* succeeds. The Tribunal awards the claimant compensation in the amount of €53,864.00 less the amount of 33,864.00 already paid to the claimant.

Therefore, in addition to any payment already made to the employee in respect of the ending of his employment with the respondent company, the Tribunal, upsetting Rights Commissioner Recommendation r-081834-ud-09 under the Unfair Dismissals Acts, 1977 to 2007, awards the appellant compensation of €20,000.00 (twenty thousand euro) under the said legislation.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

