

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIMS OF:**  
EMPLOYEE

**CASE NO.**  
UD2587/2009

*- claimant*

against  
EMPLOYER

*- respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr D. Hayes BL

Members: Mr M. Carr  
Mr J. Flannery

heard this claim at Navan on 18th February 2011  
and 19th May 2011

#### **Representation:**

Claimant: Mr. Louis McEntegart BL instructed by:  
Dillon Geraghty & Co, Solicitors, 36 Brews Hill, Navan, Co Meath

Respondent: Ms. Aisling Butler, William Fry, Solicitors, Fitzwilton House, Wilton Place,  
Dublin 2

#### **Respondent's Case**

The MD (SK) gave evidence of the dire financial situation the respondent company found itself. By July 2009 the situation was so bad that the respondent believed it would have to close. The cost cutting measures put in place failed and the respondent suffered a €602,000 loss. The respondent is still in this financial position. The respondent company is split into two markets; NC is residential carpets and MC is commercial carpets.

The claimant was involved in residential carpet (NC) sales, so heavily relied on the property market. The respondent continued to look at costs and in June 2009 the claimant's position was highlighted as a possible saving. The claimant's role had decreased to the extent that his remaining duties could easily be shared between the remaining staff.

SK had a meeting with the claimant in the morning of the 29<sup>th</sup> of July 2009 where he informed him that his job was at risk of being made redundant. SK informed the claimant that there was a redundancy procedure to follow so they would have a further meeting that afternoon. The respondent had sought legal advice on the redundancy procedure. The claimant was given the time to think about the situation, get advice and come up with any alternative suggestions. The second meeting did not take place until the following day where SK gave the claimant a letter confirming his position was being made redundant and outlining his entitlements. The claimant said he was disappointed with the redundancy package and the selection but knew that something had to happen in the business. If the claimant had suggested any alternatives they would have been seriously considered.

## **Claimant's Case**

The claimant gave evidence. He stated that he had thirty-seven years experience in the carpet / flooring business. He had previously worked for another company (NC) and when this company went into liquidation he was asked by a former colleague (SK) to join the respondent company. His role was as Operations Manager overseeing all administration issues with the respondent company. He recommended two other staff from ND be taken on – COR and MF who reported to him. As business increased another administrative staff member (MT) was recruited. He reported to SK. At first MT had no part in his role but this later changed. MOR was hired as deputy Operations Manager. Through 2005 to 2008 business was brisk. In 2009 the company had difficulties but there were no major “catastrophes”.

On July 29<sup>th</sup> he attended a meeting with SK having received a telephone call. He had no idea what the meeting was about. He was told the company was trading at a loss with no sign of improvements. He said that he was told his role was made redundant immediately and they discussed who had made the decision. He was told the Board had made it. He was extremely shocked. He was also informed that other measures were to be made. Two other colleagues were to change their working week to three days each, splitting the position so that neither would be made redundant. SK mentioned the package that would be afforded him. He asked could he hold on to the company car for a while longer as he was going on holidays and he needed it. SK said it was okay. The meeting broke up as SK asked if he needed time to think about it and maybe get some advice from his daughter who was a solicitor.

The claimant went home and discussed the matter with his wife. A further meeting was to be held that afternoon but SK was very unwell and needed medical attention. When asked he started that the meeting held the next day was a blur he told the Tribunal that he expected it was about his severance package. The meeting was held in a hotel, as the claimant did not want to go to the office, he had cleared out his desk the previous afternoon. He was asked for various items belonged to the respondent and was asked to sign an RP50 form. He had no previous consultation concerning his redundancy. He told the Tribunal that he could have come up with alternatives to his redundancy if he had been asked and would have taken a reduction in wages.

On cross-examination he stated he asked to keep the company mobile telephone he had been given as a lot of his personal contacts had that number.

## **Determination:**

The respondent's business was growing in the year up to 2008. In 2008 business dropped by approximately 16%. It was hoped that this would be a blip. However, in 2009 the market collapsed and in 2009 the respondent had losses of €602,000. The Tribunal is satisfied that the respondent's financial difficulties were well known amongst employees. The respondent attempted several cost-cutting measures but these were insufficient. It was decided by the Board that redundancies would be needed. It was pointed out that the proposed redundancies were not discussed during the regular management meetings in the months before the claimant's dismissal. The Tribunal is satisfied that these meetings were for operational purposes and that any question of redundancies was for the Board rather than middle management to discuss.

The Tribunal is satisfied that the respondent made efforts to avoid redundancies and only considered redundancies when it was clear that other measures were insufficient. It was decided to make the role of operations manager redundant. This was the role performed by the claimant. The Tribunal is satisfied that the respondent assessed the abilities of the remaining employees to carry out the duties required and that it was decided that the claimant should be chosen for dismissal.

On 29<sup>th</sup> July 2009, SK met the claimant and discussed his redundancy with him. The Tribunal is satisfied that at this stage, the claimant's selection for redundancy was probable but not confirmed. The claimant was asked to consider the proposed terms and to consider any alternatives to his dismissal. The following day SK took ill and they were unable to meet. When they did meet again, the Tribunal is satisfied that the

claimant accepted his dismissal as a fait accompli. Certainly, no suggestions were made by him.

In the ordinary course, it is not sufficient for an employer to put the onus on identifying alternatives to dismissal on his employees. In this case the Tribunal is satisfied that the respondent considered and attempted alternatives. The Tribunal is satisfied that, as a last resort to losing the claimant, he was asked if he could think of anything, in case the respondent had missed a potential alternative. The claimant told the Tribunal that he would have been prepared to accept a reduction in pay if it would have helped to save his job. This was not, however, indicated to the respondent. The Tribunal is satisfied that the claimant was aware that the respondent was experiencing severe financial difficulties and that he ought to have been aware of the possibility of redundancies.

The Tribunal is satisfied that a genuine redundancy situation existed and that the claimant's selection for dismissal was not, in the circumstances, unfair. The Tribunal is, accordingly, satisfied that the claimant's dismissal was not unfair. Accordingly the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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