

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF: CASE NO.
EMPLOYEE TE119/2011
Appellant UD831/2011

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

EMPLOYEE *Appellant*

EMPLOYER *Respondent*

under

TERMS OF EMPLOYMENT (INFORMATION) ACT, 1994 AND 2001 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. O'Connell B.L.

Members: Mr. R. Prole
Mr P. Trehy

heard this appeal at Dublin on 8th March 2012

Representation:

Appellant(s): Mr. Richard Grogan, Richard Grogan & Associates,
Solicitors, 16 & 17 College Green, Dublin 2

Respondent(s): The HR Manager

The determination of the Tribunal was as follows:-

These cases came before the Tribunal by way of an employee appealing the recommendations of a rights commissioner reference nos. r-098217-ud-10/GC and r-98215-te-10/GC dated 30th March 2011.

Respondent's Case

JK told the Tribunal that redundancies were implemented in Ireland and she felt that the process was fair. The criterion used was the employees' disciplinary record and verbal warning. The respondent used the Bradford Index. It did not consider LIFO. The appellant had one absence which was certified. The other employee whom he was rated against did not have any absences. The appellant had three year's service and his colleague had one year's service. The length of service did not arise and the respondent did not have evidence regarding

who was the best employee. It decided on criteria that were fact based.

All employees were invited to a presentation and after that the respondent had a meeting with employees. Employees were invited to give suggestions and if employees offered any alternative proposals to the respondent they would be considered. The appellant was asked to come up with alternative proposals.

In cross examination she stated if LIFO was used the appellant had more service than his colleague AB. She accepted that the appellant had a very high attendance record and he had one day's certified sick leave in three years of employment.

Appellant's Case

The appellant told the Tribunal that when he was being made redundant he had one day of absence and that is all he was told about redundancy. He attended a presentation in the company. There was a lot of consultation but he did not know what it referred to. He was given the opportunity to put forward points of view and he was given the opportunity to ask questions and he had quite a few questions.. At a meeting all employees gave suggestions and he could not remember what he suggested. He did contribute but he could not recall what he suggested. He was not aware of the selection criteria. At the last meeting he was told he had one absence and he had to leave the respondent. His manager was on holiday and a different manager spoke to him and this manager did not know him.

He sought alternative employment and he applied for ten to fifteen jobs. He obtained alternative employment but he could not provide a statement of current earnings, a payslip or a P60 for last year.

Determination

The issue in this case was the fairness or otherwise of the redundancy selection criteria, the respondent maintained that by referring to the disciplinary record and absenteeism records a fair score could be used. The use of short term absences is used in the UK to reduce absenteeism and is known as the Bradford Factor. However, the Tribunal feels that the use of the Bradford Factor as a criterion for selection for redundancy is inappropriate in this case. According to the system the appellant who had a clear disciplinary record registered a negative score of one point. This arose from one day certified sick leave. This criterion took no consideration of subjective factors such as performance and length of service was also disregarded. The Tribunal notes that the respondent engaged in a genuine consultation process in which the appellant was asked to make suggestions in relation to possible cost savings. However the decision to select the appellant over the only other comparable appellant was based on the fact that he was sick for one day throughout his three years of service. While the Tribunal accepts that the respondent made genuine efforts to rely on objective criterion and to use fair procedures the Tribunal believes the dismissal of the appellant in this case was technically unfair.

The appellant has succeeded in finding new employment but was unable to say when this commenced and he could provide no documentary evidence of his recent earnings or on-going losses. In the circumstances the Tribunal awards the appellant compensation of €750.00 under the Unfair Dismissals Acts, 1977 to 2007 and upsets the recommendation of the Rights Commissioner.

The Tribunal heard evidence in relation to the claim under Section 3 of the Terms and Conditions of Employment Act 1991 to 2004 and it affirms the recommendation of the Rights Commissioner and the Appeal fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)

