

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE - *Claimant*

UD1733/2010

Against

EMPLOYER - *Respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr T. Taaffe  
Members: Mr. D. Winston  
Mr N. Dowling

heard this claim at Dublin on 25th January 2012 and 26th March 2012

#### **Representation:**

Claimant(s) : Byrne Wallace, Solicitors, 2 Grand Canal Square, Dublin 2

Respondent(s) : Mr Michael McGrath, IBEC, Confederation House,  
84/86 Lower Baggot Street, Dublin 2

#### **Respondents Case**

ED of the respondent company gave evidence of taking up the position of Managing Director on the 1<sup>st</sup> November 2009 having previously held the position of Financial Controller. Due to a drop in white goods sales of up to 60% a decision to cut pay was made in December 2009 and implemented in January 2010. A decision to make the position of white goods sales manager redundant was also taken. The position of white goods sales manager was held by the claimant at the time. ED told the Tribunal the decision was made following a number of meetings with the Directors however he could not confirm the dates of the meetings and could not provide minutes of those meetings. This decision was communicated to the claimant at a meeting on the 29<sup>th</sup> January 2010. ED, BC and the claimant were present at that meeting. The claimant was offered redundancy or an alternative job. ED confirmed he had met with a large supplier prior to taking on the role of MD. At the time he had a broad restructuring plan in his head which included making the white goods manager position redundant which he communicated to a large supplier / customer. He envisaged a new role for the claimant which included managing clients which he referred to as Multiples. The role would require a more on the ground approach rather than just meeting them at Head Office level as had been the case. At that meeting of the 29<sup>th</sup> January the claimant rejected the offer saying he did not wish to become a sales

representative and he left the room. A letter following up on the meeting was read into evidence. ED told the Tribunal the white goods area had continued to decline and the restructuring was essential for the company. He provided examples of other areas where restructuring was implemented in the administration and office support areas and said he had absorbed the functions of the white goods sales manager.

### **Claimants Case**

The claimant gave evidence of commencing employment with the respondent company on the 1<sup>st</sup> February 2006 as white goods sales manager. His day to day role involved liaising and managing internal and external sales teams, meeting suppliers and negotiating pricing. In 2008 a sales representative JH whose role was dealing with the Multiples was made redundant and the claimant absorbed this work. The combined role was a struggle and he tried to prioritise the workload. At the meeting on the 2<sup>nd</sup> November 2009 the MD assigned him to the role as sales representative to the Multiples nationwide. Although he was concerned at the time he agreed as it was suggested that it was on a temporary basis. In December the claimant was asked to support a pay cut and a cut to pension contributions which was not discussed with him in advance and there was no option to refuse the pay cut. In January JW a large customer/ client of the respondent company indicated to the claimant that he understood the position of white goods sales manager was gone. At the meeting on the 29<sup>th</sup> January 2010 ED gave him two options, redundancy or an alternative role as a sales representative. Although he got no written job specifications he understood the job offered was a job he was already doing. The meeting ended abruptly. He was surprised at what had taken place as he was in a key management position and had heard nothing about the restructuring or the position being made redundant prior to that meeting. On the 10<sup>th</sup> February 2010 he received an email urging him to make a decision quickly.

### **Determination**

The Tribunal carefully considered the evidence adduced and the submissions made. The Tribunal is satisfied that a genuine redundancy situation arose which was addressed by the respondent because of the deteriorating financial situation.

It is satisfied that prior to the replacement of its former Managing Director with the present incumbent on the 1<sup>st</sup> November 2009 that the respondent decided to make the claimants position redundant without his knowledge and represented this to a principal customer. Additionally, it is accepted that formal discussion of this redundancy took place at a number of meetings in December 2009 in the absence of the claimant culminating in the final meeting of the 29<sup>th</sup> January 2010.

In examining the redundancy process engaged in by the respondent the Tribunal notes the following

1. It is agreed by the parties that no consultation took place between them prior to a meeting on the 29<sup>th</sup> January 2010 which confirmed his redundancy.
2. That no notice of this meeting or of its content was given to the claimant prior to it taking place.
3. That no written job description was provided to the claimant in respect of the proposed alternative employment at this meeting.

The Tribunal finds that the fore-going represents unfair and unreasonable behaviour on the part of the respondent towards the claimant in that he was denied and deprived of the opportunity to

engage or discuss with the respondent the redundancy or the alternative non-managerial employment offered at any forum with them so as to enable him if he so wished to make any alternative proposals to them in respect of the redundancy or offer of employment. The respondent has therefore failed to discharge the onus placed upon them to establish that they acted properly in their implementation of the redundancy process. Because of the afore-mentioned it is clear that there was present in the redundancy process engaged in by the respondent a significant procedural deficit which the Tribunal finds was sufficiently serious in its nature so as to render the redundancy in effect a dismissal and it is so determined.

Section 6(3) of the unfair Dismissal Act 1977 as amended by Section 5(b) of the 1993 Act states that in determining if a dismissal is an unfair dismissal, regard may be had, if the Rights Commissioner, the Tribunal or the Circuit Court, as the case may be considers it appropriate to do so, to the reasonableness or otherwise of the conduct (whether by act or by omission) of the employer in relation to the dismissal.

The Tribunal therefore finds that the redundancy of the claimant by the respondent was an unfair dismissal within the meaning of the Unfair Dismissals Act 1977 to 2007 and awards him compensation of €40,000.00. The Tribunal confirms that the award is inclusive of the redundancy payment of €5,496.00 made to the claimant on termination of his employment.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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