

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
EMPLOYEE  
- *claimant*

CASE NO.

UD1388/2010

against  
EMPLOYER  
- *respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr P. Hurley

Members: Mr T. Gill  
Mr T. Brady

heard this claim at Tullamore on 15th February 2012  
and 30th April 2012

Representation:

Claimant(s) : Mr. Oisín Scollard BL instructed by Hughes Kehoe & Co, Solicitors, Patrick Street, Tullamore, Co Offaly

Respondent(s) : Mr Terry Cummins, IBEC, Irish Printing Federation,  
Confederation House, 84/86 Lower Baggot Street, Dublin 2

### Respondent's Case

The Tribunal heard evidence that the respondent company which is a supplier of breads, cakes, confectionary and desserts to the Foodservice market embarked on a large restructuring of its sales division in 2010 due to the downturn in the economy and decreasing revenues. In February 2010 approximately 20 employees within the sales division were invited to a meeting and a presentation was given regarding the proposed restructuring of the company into the future. As a result of the restructuring existing positions were to be eliminated and new roles created. The position of area sales manager in which the claimant and eight others were employed was to be discontinued and a new position of regional sales manager was to be created as part of the restructuring process.

The company conducted an interview process and all area sales managers were interviewed for the new positions of regional sales manager. All candidates were interviewed by the same panel, (AG and JMcC), and the interviews were conducted through identical competency based questions asked of each candidate. At the end of each interview (AG and JMcC) consulted each other and deliberated on the answers given by the candidates. Scores were then allocated to each candidate under the various competencies. Following the completion of the interview process the claimant was unsuccessful and was offered redeployment within the company as a category sales specialist, a role in which he had been employed prior to being promoted to the position of area sales manager. The position of category sales specialist carried a salary of €38,000 as opposed to the salary of €40,000 which was the salary of a regional sales manager. The claimant declined this offer of redeployment and did not apply for any other positions within the company. The claimant was made redundant in March 2010. He was paid his statutory redundancy entitlement plus an ex-gratia payment.

### **Claimant's Case**

The claimant gave direct evidence that he worked for the respondent company for a total of almost eight years. This period included a break in his service for a brief period following which he re-joined the company as a result of an approach from the company to do so. He was subsequently promoted to the position of area sales manager managing a team of six to eight employees. He was based in the midlands and had a good track record with the company, consistently achieving the targets set by the company. He earned regular bonuses with the company in addition to his annual salary of €40,000 as a result of achieving these targets.

In February 2010 he, along with approximately 25 employees were invited to attend a presentation when they were informed of the proposed restructuring of the company. He understood the reasons for the restructuring and was aware that turnover had decreased considerably in the company. He subsequently attended the interview process for the position of regional sales manager and was interviewed for the position by (AG and JMcC). He was not provided with the competency based questions beforehand and was not aware that the interview was being scored. He was asked general questions and was confident that he had performed well at the interview. He was subsequently informed by (BE, AG and JMcC) that he was unsuccessful at the interview process. He was shocked to hear this and asked on numerous occasions for feedback from the interview process but he never received any feedback. He felt devastated as he thought that he was going to have a long career with the company.

He was then offered the position of category specialist but he did not accept this position as he had originally been employed as a category specialist prior to his promotion as area sales manager. He felt that if he accepted this position it would have destroyed his career. It would have been a backward step in his career and he would have had little chance to earn a bonus in that position which he had regularly earned in his position as area sales manager. He agreed that other employees accepted the offer of redeployment as a category specialist. He gave further evidence that it was never made clear to him as to why he had not been successful at the interview process as he never received any feedback despite several requests. He was made

redundant in March 2010. He accepted that he did not complain about the interview selection process and did not inform the company that he felt it was unfair. Since the termination of his employment he has sought alternative employment without success. He is currently self-employed.

### **Determination**

The Tribunal carefully considered the relevant evidence, both oral and documentary, and, having in particular considered the presentation of the scoring matrix and the evidence as to the evaluation of the claimant's score is unable to find any suggestion that he was unfairly treated. It is not the function of the Tribunal, in the absence of manifest unfairness to look behind the respondent's evidence as to the operation of the matrix and the ultimate outcome. The Tribunal is satisfied that the respondent company made every effort to facilitate the continued employment of the claimant. In that regard the Tribunal notes that the claimant was offered a position within the company at a very slightly reduced salary and he declined this offer.

In all the circumstances the Tribunal is satisfied that the claimant was not unfairly dismissed and the claim under the Unfair Dismissals Acts 1977 to 2007 fails.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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

