

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

-claimant

CASE NO.
UD1550/2010

Against

EMPLOYER

-respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms D. Donovan B.L.

Members: Mr M. Murphy
Mr F. Keoghan

heard this claim at Trim on 19th December 2011

Representation:

Claimant: Ms Bonnie Hickey B.L. instructed by
Able, Solicitors, 72 Tyrconnell Road, Inchicore, Dublin 8

Respondent: Ms. Muireann McEnery, Peninsula Business Services (Ireland) Limited,
Unit 3 Ground Floor, Block S, East Point Business Park, Dublin 3

Background

The respondent is involved in the supply and repair of mining equipment; they have 3 major clients. Due to a downturn in business they made the decision to make the claimant's role redundant. The claimant disputes that a genuine redundancy situation existed within the respondent.

Respondents' Case

The General Manager (JM) gave evidence. In 2008/2009 there were 20 machines to get ready in the workshop in Ardbraken; by June 2009 this work was complete and the workshop was very quiet. The respondent's main source of work (other than supply of machinery) was 'breakdowns'; the volume of this work cannot be predicted. The respondent waited to see if any of their clients had any big jobs forthcoming; 'we held on till the end of the year.'

On the 10th of December a meeting was held to inform the staff of what work was coming up and how badly the business was faring and that the loss for the previous six months had been significant. The respondent employed an external advisor to look at the company accounts. He was employed to advise on redundancies and how the company should proceed. A memo dated

the 19th of January 2010 composed by this witness was sent to the respondent owner and the external advisor. It stated, *'having carried out the review it has been decided that we can operate the workshops with fewer people reducing the staffing level from 14 to 11. The review also considered the skills required for the continuing operations at the workshops in a businesslike structure. List of staff to be made redundant: claimant (and two others).'* It was also decided to remove two vans from the fleet. This memo was posted on the notice board for all the staff to see.

The claimant was given notice of redundancy on the 22nd of January 2010. An 'exit' meeting was held in February to ask any questions. There were no alternatives available to offer the claimant. JM gave evidence on how the claimant was selected. The claimant was not a construction plant fitter and could not work underground in the mines; these were determined as essential skills by the respondent, the major clients required staff to be construction plant fitters to work underground. LIFO was applied in choosing the claimant among the comparable employees. The 'two others' also made redundant at the same time as the claimant were re-hired for specific jobs. The first person (MK) is a fitter/welder with experience in hydraulics; the claimant could not have done his job. The second person (ML) was a general operative and was re-employed as a labourer on site to cover sick leave of (C), ML regularly covered this sick leave and said he was willing to do anything at his exit interview.

The claimant's trade was as an aircraft mechanic. There was a role advertised post the claimant's redundancy on the FÁS website for a heavy plant fitter with 3-5 years' experience underground; the claimant could not have filled this role. The claimant has not been replaced. The staff kept on were all qualified construction plant fitters. The claimant was informed that he was being let go as he didn't have the necessary qualifications to work for the major clients i.e. he wasn't a construction plant fitter.

Claimant's Case

The claimant was engaged in plant fitting work. The claimant did both mechanical and electrical work and although he was not qualified to do it, he was capable of doing it. The claimant has never worked underground. There has never been any issue with his qualifications before the redundancy. The claimant was not aware that the clients required a plant fitter qualification to work on their site. The claimant was never informed that he was being made redundant because he could not work underground.

The claimant was not at the 10th of December meeting. He did not see the memo posted to the notice board. He was called to a meeting and informed he was being made redundant; he was not offered any alternatives. The claimant was aware when contracts were ending and that the company might struggle. The claimant gave evidence of loss and his attempt to mitigate his loss.

Determination

Having considered the evidence adduced at the hearing the Tribunal is not satisfied that the claimant was unfit to carry out the work on the contract secured with the third party client. Accordingly the claimant was unfairly selected for redundancy and the claim under the Unfair Dismissals Acts 1977 to 2007 succeeds. The Tribunal award the claimant €25,000.00 as compensation.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)