

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:		CASE NO.
EMPLOYEE	<i>-claimant 1</i>	UD407/2010
EMPLOYEE	<i>-claimant 2</i>	UD408/2010
EMPLOYEE	<i>-claimant 3</i>	UD409/2010

against	
EMPLOYER	<i>-respondent</i>

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms S. McNally

Members: Ms M. Sweeney
Mr. J. Flavin

heard this claim at Cork on 21st February 2011
and 12th May 2011

Representation:

Claimant: Mr Graham Hyde, Thomas Coughlan & Co, Solicitors, 1-2 Anglesea Street,
Cork

Respondent: Mr. David Flanagan, Ronan Daly Jermyn, Solicitors, 12 South Mall, Cork

Respondent's Case

The site manager (PR) gave evidence. It became apparent to PR that there was no work upcoming or forthcoming in the near future. As a result PR consulted with the operations manager regarding redundancies and the possibility of redeployment. On the 29th of October a consultancy meeting was held, where the staff were informed that there was the potential of redundancy. The staff were informed that re-deployment would be considered first and if that option failed a matrix would be used in selecting staff for redundancy. The claimants were selected for redundancy and given two weeks' notice, but claimant 2 requested to leave a week earlier with another group of staff that had been made redundant and PR presumed the request was on behalf of all three claimants. Some of the staff had asbestos training but there was no work in this area either. PR would have answered any questions regarding the selection matrix had any of the claimants approached him. PR had no decision making function when it came to selecting staff for redundancy. If he needed staff or had too many staff he contacted the HR department. A meeting took place with SIPTU on the 8th of December 2009 regarding the claimant's redundancy and the redundancy matrix used in selecting the claimants as agreed between SIPTU and the respondent.

The Operations Manager (POD) gave evidence. The respondent moved away from a last in first out redundancy policy in 2006 as it deemed it unfair. The Board of Directors agreed on the redundancy selection criteria and contacted SIPTU to inform them of this decision. In January 2009, SIPTU and the respondent agreed on the selection criteria that would be used throughout the respondent. The respondent presumed that SIPTU would inform its members of the agreement reached. The agreed criteria were; length of service, attendance, disciplinary record, time-keeping. All of the subjective criteria contained in Contract of Employment were removed i.e. 'performance, competence, suitability, aptitude, application, adaptability, willingness to train, home proximity to work availability, the need to have a balanced workforce.'

The site manager (PR) rang the witness looking for positions for the claimants when it became clear there was no work forthcoming. POD reverted back to PR within a week informing him there were no other positions available and that he would have to start the consultation process. The respondent secured a new contract the week following the claimant's redundancy starting on the 1st of December 2009. POD instructed the HR Department to re-engage the 'best 5 lads' for the new work that was supposed to last four weeks (cc site). Of the five re-engaged staff three of them left after 3 weeks as they secured alternative employment and the remaining two stayed as the (cc site) contract was extended. Temporary lay-off or short-time was not considered as he did not believe or foresee any work becoming available.

Claimant's Case

Claimant 1

Claimant 1 agrees with the facts as set out by claimant 2. Claimant 1 was approached by his immediate supervisor and informed he could 'finish up early if he wanted.' He found out the following Monday that the other staff had been called back to work and believes that, as he was on notice and therefore still an employee that he should have been kept on. The claimant is aware that time-keeping/disciplinary issues would be taken into account when selecting staff for redundancy.

Claimant 2

Claimant 2 was aware that there was a downturn and had been informed by PR that there could be lay-offs; a redundancy matrix was not mentioned. He was aware of the selection criteria as set out in the contract of employment. He was not aware of and never informed of the changes to the contract that the respondent and SIPTU agreed. At the consultation meeting the claimant was given 2 weeks' notice and informed that the respondent was attempt to secure alternative employment. PR then informed the claimant that he 'may as well finish with the other guys' meaning he would not have to work out his full 2 weeks' notice.

Claimant 2 was not told why he was chosen for redundancy. He was asked to collect his cheque and documents on the 30th of November. On the 8th of December 2009, SIPTU met with the respondent on the claimant's behalf. The claimant was informed by his SIPTU representative that there was an unauthorised absence but did not mention a selection matrix.

The claimant was under the impression that all nine staff were being made redundant and only considered his selection unfair when he discovered that this was not the case.

Claimant 3

Claimant 3 agrees with the facts as set out by claimant 2. He was asked by his supervisor did he want to finish early with 'the rest of the lads.' The claimant was informed by his SIPTU representative that he had 2 unauthorised absences considered in the selection matrix. The claimant was unaware that these absences would be taken into consideration in a redundancy situation.

Determination

The Tribunal is satisfied that while there was undisputed evidence that the matrix used in the selection process had been varied in January 2009, there was no evidence that the matrix was effectively communicated to all employees as per the standard terms and conditions of employment. Consequently no opportunity was afforded to the employees to object to the change to their terms and conditions of employment and in turn be consulted in the procedures used for selection for redundancy.

The Tribunal determine that the claimants were unfairly dismissed by virtue of Section 6.3(b) of the Unfair Dismissals Act 1977 to 2007 and award each claimant €3,000.00 under the Acts, in addition to a lump sum under the Redundancy Payments Acts 1967 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)