

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

UD1654/2010

- Appellant (Employer)

against the recommendation of the Rights Commissioner **R-086063-UD-09-JOC**
in the case of

- Employee (Employee)

Under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms K.T. O'Mahony BL

Members: Mr D. Hegarty
Ms H. Kelleher

heard this appeal at Cork on 8 February 2012

Representation:

Appellant:
Mr Paul Dunne, IBEC, Confederation House,
84-86 Lower Baggot Street, Dublin 2

Employee:
Mr Bill Mulcahy, SIPTU, Connolly Hall,
Lapps Quay, Cork

The determination of the Tribunal was as follows: -

This case came before the Tribunal as a result of an appeal by the employer (the appellant) against a decision of the Rights Commissioner under the Unfair Dismissals Acts **R-086063-UD-09-JOC** in the case of an employee (the respondent).

Employer's Case

The employer is a wholesale distributor, supplying electrical goods to trade and industry. It has several locations in Ireland. The employer's position was that in August 2008, following a major

acquisition the employer reduced its locations in Cork and eventually it traded from only two locations there. By the end of 2008 there was a substantial drop in sales and a trading loss of €1.89m. The business continued to deteriorate into 2009 and in May following the production of Statement of Operations for April 2009 the employers manager called a meeting with the employees who agreed to his proposal to go on short time, working a three-day week. However this arrangement proved frustrating for customers and staff and other options had to be considered. Cutting salaries was not an option. It was decided revert to full-time hours and to restructure.

The manager held a general meeting with the workforce on 12 August 2009 at which he informed them about the employer's trading position, the need to return to full-time work, the forthcoming restructure and redundancies whereby the workforce would be reduced from 14 to 8 employees with all employees' positions being at risk. To attain viability the employer had to retain a good team with key skills going forward. The manager further informed the workforce that he would be holding individual meetings with them over the following two days at which he would explain the new roles to them and they could raise any issues they wished to discuss with him and from this he would decide who would be retained and who would be made redundant. As far as he could recall he told the employees that he had no objection to their bringing someone with them to the meeting. There were no objections or suggestions from the floor.

At the individual meetings the manager again explained that there would be redundancies, new roles were being created, new job descriptions were outlined and the employees were asked to outline their strengths and weaknesses. Employees were being evaluated for the new roles. The manager developed a matrix, which was more for his own benefit.

The manager met the employee on 13 August 2009 and outlined the new role available to him, which combined his former duties of warehouse operative with driving duties. The employee indicated that he was not interested in driving. When the manager informed him that no special licence was required for the new role the employee told him that he did not want to be considered for the role. The manager explained to the employee that this would take him out of the process and he would accordingly become redundant. As the employee was paid up to the last day of the month the manager explained to him that he could either leave that day or work out his notice. The manager did not go through the matrix with the employee because in indicating that he did not want to take up the newly created role he had taken himself out of the process.

In a letter dated 14 August 2009 to the employee, the manager confirmed his redundancy and set out the payments that would be made to him on 31 August 2009, the date his position was being made redundant: a statutory redundancy payment of €7,774.74, an ex-gratia payment of €6,433.00 and a payment in lieu of notice in the amount of €1,838.00. A copy of the employee's RP59 was enclosed with the letter. The employee signed the RP50 and retained all payments made.

The manager did not discuss the combined role of warehouse operative and sales with the employee. The employee did not apply for that position when it was advertised some four weeks later, when the employee who had taken up that position in the restructure left.

Two shop stewards had opted for voluntary redundancy in an earlier redundancy and no one had since then identified himself as a shop steward. Two senior members of staff are members of the trade union and they raised no issue about the redundancies. The company was fighting for survival. Old roles were being made redundant and new roles were created for the survival of the company.

Employee's Case

The employee, having 8 years' service with the appellant, was its longest serving employee. The meeting on Wednesday 12 August lasted around ten minutes, the atmosphere at it was tense and workers were worried because they did not know what was happening. He had no idea why he was going into the individual meeting on 13 August and felt he was going in to discuss the business. This second meeting lasted 5/6 minutes and nothing was explained.

The manager asked him if he would be interested in the driving job. As he had no experience in driving big vans or trucks and because he was not told he would be offered training or support for the driving role he turned it down. He was so fed up he did not work his notice. He would have been interested in the position which combined warehouse operative and sales had it been offered to him. He did not apply for that position some four weeks later when it was advertised because he thought to do so might jeopardise his case before the Labour Relations Commission. He was not told that he could have trade union representation for the meeting. Nor was he made aware that he could lodge an appeal.

In the restructured organisation going forward the functions of warehouse operative and driver were combined and the functions of warehouse operative and sales were combined.

Determination:

The Tribunal is satisfied that the employer sustained serious trading losses and ultimately took the decision to restructure which resulted in a number of redundancies.

In the restructure roles were combined. The employee's position of warehouse operative was combined with that of van driver. The employee indicated to the employer that he did not wish to be considered for the newly combined role of warehouse operative and driver.

The Tribunal is satisfied that the employer is entitled to rely on the Redundancy Payments Acts, 1967 to 2007, section 7 (2) which provides:-

...an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is attributable wholly or mainly to:

(e) "the fact that his employer has decided that the work for which the employee had been employed (or had been doing before his dismissal) should henceforward be done by a person who is also capable of doing other work for which the employee is not sufficiently qualified or trained"
Accordingly, the employee's dismissal is by reason of redundancy.

The Tribunal accepts the manager's evidence that at the meeting of 12 August 2009 the workforce was made aware of the upcoming restructure and redundancies and that these were to be discussed at the individual meetings over the following days. Accordingly, the employee had prior notice of the purpose of the meeting of 13 August 2009. In the particular circumstances in which the employer found itself it was entirely reasonable for it to seek to retain multi-skilled employees in order to progress the business in the most efficient manner.

Accordingly, the employee's dismissal is both substantively and procedurally fair. The appeal

under the Unfair Dismissals Acts, 1977 to 2007 succeeds and the recommendation of the Rights Commissioner under the Acts is set aside.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)