

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD1826/2010

against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr C. Corcoran B.L.

Members: Mr J. Horan
Mr F. Keoghan

heard this claim at Dublin on 18th January and 11th April 2012

Representation:

Claimant : Mr Michael Block B L instructed by
John Nolan & Company, Solicitors, 11 Parliament Street, Dublin 2

Respondent : No representation listed

The determination of the Tribunal was as follows:

Respondent's Case

The respondent was involved in the flooring business. The Tribunal was told that this enterprise experienced a fifty percent decrease in its sales revenues from 2007 up to 2010. Towards the end of 2009 the former managing director met the claimant who was an experienced and long serving sales representative and discussed this deteriorating situation. He presented the claimant with two options-either to leave with a clear monetary package or remain on and take over contract customers. Around that time the claimant had made it known that he would go if the package was right. However, he opted not to accept the package and the managing director told the Tribunal that this was not a redundancy situation at that time.

Around that time a less remunerated employee than the claimant was appointed to the new position of sales manager in the respondent's other company. The managing director said it was untrue that he was placed there as a younger cheaper replacement for the claimant.

By May 2010 the directors reluctantly decided that a reduction in their sales force from five representatives to no more than three was necessary as a cost cutting measure. Restructuring was

needed and in that context a non-executive director and an outside business consultant became engaged in a behavioural and competency based interview with the purpose of scoring those five sales people.

While not part of the decision making process this non-executive director was aware that those who scored lowest on the interviews were facing redundancy. Five competencies were chosen and agreed on with the respondent and the non-executive director and his colleague asked a number of questions to the candidates on those issues. A summary of their answers were committed to writing and then marked out of five. The scoring was then furnished to the two executive directors who in turn based their redundancy decision on those results. Since the claimant's scoring was not among the top three he was given his notice of termination of employment on 10 June 2010.

Some three months later the respondent closed down as a going concern and was placed into voluntary liquidation. All the remaining staff lost their jobs as a result of that development.

This non-executive director was not aware of alternatives to redundancy offered to the claimant. He added that no appeal process was offered to him either and confirmed that he knew the claimant was sick during the interview exercise that took place in early June.

The outside business consultant confirmed he assisted the non-executive director in an interview process with the sales representatives. He described that process as standard and at the time was not aware it was linked to a redundancy selection exercise by the respondent. This witness outlined the scoring process adopted for that process and acknowledged that different approaches would be applied depending on the rationale for those interviews. The claimant's past performance and general background was not considered when scoring him.

Claimant's Case

The claimant commenced employment as a sales representative with the respondent in early 2006. Almost from the beginning he exceeded his targets and sales and maintained that standard throughout his time with the company. He was also successful in marketing and selling new products to customers. The claimant's performance earned him formal recognition and rewards from the respondent. His salary on average consisted of around fifty percent commission payments.

He told the Tribunal that he regarded himself as a key employee as defined in the company handbook. All his yearly work performance appraisals were positive.

In December 2009 the claimant met the managing director who offered him a package which would have involved him leaving the company as an employee. While no reason was given for that offer the claimant was reminded that he was the highest remunerated employee and that the respondent was experiencing financial difficulties. He refused the offer.

Prior to receiving an invitation to attend an interview for a position he already held, the "word" in the office was that he would not retain the job. He was aware that this interview process was directly linked to redundancy selection and requested certain documentation from the company in advance of that process. Notwithstanding the fact that he did not receive those documents and the fact that he was ill with a medical certificate the respondent insisted he must attend his interview. There he met the two interviewers who put a number of questions to him. His record with the respondent was not addressed during that process.

On 19 June 2010 the claimant received notice of his dismissal by way of redundancy. He was subsequently issued with a RP50 form together with a cheque to cover his statutory redundancy payment which he accepted. No alternatives to redundancies were offered to him. It was also his contention that some of the retained sales team could have been selected for redundancy.

Determination

Objective selection criteria are needed in order to carry out a proper redundancy procedure. There is no evidence that such procedure was carried out in this case. The purpose of those interviews with the sales team including the claimant was unclear and lacked direction and focus. Any procedures that did exist were unfair to the claimant. The Tribunal accepts the claimant's assertion that this was a sham exercise and finds that the claimant was unfairly dismissed.

Having considered the circumstances of this case the Tribunal awards the claimant €31,000.00 as compensation under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

