EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF: CASE NO.

UD135/2011

EMPLOYEE – ***appellant***

against the recommendation of the Rights Commissioner in the case of:

EMPLOYER – ***respondent***

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr. B. Kealy
Mr. C. Ryan

heard this appeal in Dublin on 4th April 2012

Representation:

_____

Appellant: Mr. Richard Grogan, Richard Grogan & Associates, Solicitors, 16 & 17 College Green, Dublin 2

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

This case came before the Tribunal by way of an employee (the appellant) appealing against a Rights Commissioner recommendation reference: r-079376-ud-09/GC.

The determination of the Tribunal was as follows:-

Respondents Case

RG told the Tribunal the respondent was a security company and towards the end of 2008, they were affected by the recession. One of their clients MH cut the hours on the site where the claimant worked. She held two meetings with the staff, on the 24th and 26th November to explain that the 24/7 shift was finished and that it would a 12 hour shift, Monday to Friday. It had gone from 168 hours to 60 hours per week. Staff on that site would be losing a shift premium, night premium and Sunday premium. The public holiday premium would be reduced to the standard day off. She asked the staff to be professional. She did not know what other hours their clients would be cutting.

She offered the staff working on the site including the appellant, the receptionist job. This involved a pay cut to the national minimum wage of €8.65 per hour.

After the meeting she spoke to the appellant. The appellant had been due in work at 8pm. When he didn't show up she phoned him but he did not answer. At that meeting he told her his father in law was visiting. He also told her he was working for another employer. She asked the appellant if he was staying with them or moving to the other employer. He said he wasn't sure and he would get back to her.

Throughout the whole of January 2009 the respondent spoke to all staff. The respondent did not know at that time they would be losing 15% -20% of their business.

When the person who took the receptionist role it not did work out, she e-mailed and telephoned the appellant offering him the job a second time.

There was seven staff made redundant. Some of them had shorter service; others had longer service than the appellant. The appellant worked until 2nd March. He went on annual leave and was made redundant on the 15th March.

A matrix was used to select staff for redundancy. This had ten skills including performance levels, length of service, attendance record and disciplinary record. When the respondent went to each site, they had a folder with the employees work history and a copy of the matrix. The appellant was shown a copy of each. The appellant had admitted working for another employer and had more warnings than other employees.

On the 20th March she received an e-mail from the appellant enquiring if the respondent had any more hours for him, and if not requesting his P45. A few days later, she left his P45 for him to collect. They discovered there was a clerical error on the P45. She contacted the appellant on the 24th, 25th and 30th March to arrange for him to collect his correct P45 and for an exit interview.

In April 2009, the company was given additional hours by a client and on the 16th April she sent a registered letter to the appellant offering him work

During cross-examination RG said the minutes of the meeting on the 24th November were typed and used in the meeting on the 26th. She said the appellant had worked on three sites and was contacted to work thirty nine hours.

All staff were on fixed term contracts. There was no provision in the contract to exclude redundancy.

RG said she had no notes of the meetings with the appellant. The meetings were held in the office.

In late November when she asked him who he wished to work for, he said he wasn't sure what hours he would get. She told him that he could not work more than forty eight hours per week. She had a letter to give him at the meeting on the 26th. He had worked for a continuous twenty four hours. She did not give him the letter.

When they looked at the scores from the matrix, the staff with the longest service were kept. One staff member who had less English was the only person with a higher score than the appellant to be let go.

Appellants Case

The appellant said he saw the matrix for the first time during the Rights Commissioner hearing. He was not told of the selection process or that he could appeal. He did get a warning for covering another employee's shift.

During cross-examination the appellant confirmed he attended a meeting on the 26th November but that potential redundancy was not discussed. He did remember a discussion on voluntary redundancy.

The receptionist role was offered to all staff and he accepted the job. He worked as a receptionist in MH and in a shopping centre as a security guard.

Determination

In January 2009 due to the downturn in the economy the Respondent gave evidence that it had to make a number of positions redundant as this was the only way of sustaining the viability of the company. The positions selected for redundancy were selected in accordance with a matrix. The matrix took account of various skills and the appellant's position was selected for redundancy along with a number of other employees.

The appellant's evidence was that he never saw the matrix until the Rights Commissioner Hearing; that he was unfairly selected for redundancy and that another employee, who was doing the same job, and had less service than him, was kept on.

In March 2009 the appellant emailed the Respondent enquiring if there was more hours for him and if not to send him on his P45.

In April 2009, the company was given additional hours by a client and on the 16th April sent a registered letter to the appellant offering him work. This letter was signed for but the appellant denied receiving it.

The respondent met with the appellant on the 26th November 2009 but there is conflict of

evidence as to what was discussed. It is not clear to the Tribunal that the respondent afforded the appellant sufficient opportunity to make representations as to how his job could be saved but the Tribunal does accept that the respondent was going through very challenging times.

Having considered the totality of the evidence the Tribunal determines that the claimant was unfairly dismissed. The Tribunal deems compensation the most appropriate remedy and awards the claimant the sum of €1,500.00 under the Unfair Dismissals Acts 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)