EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:	CASE NO.
EMPLOYER	PE36-PE40/2010

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

under

EUROPEAN COMMUNITIES (PROTECTION OF EMPLOYMENT) REGULATIONS 2000

I certify that the Tribunal
(Division of Tribunal)
Chairman: Mr J. Lucey
Members: Mr. W. O'Carroll
Ms S. Kelly

heard this appeal at Limerick on 27th October 2011

Representation:
Appellant: Mr. Mark Connaughton SC instructed by Joanne Hyde Solicitor
Eversheds O'Donnell Sweeney, Solicitors, One Earlsfort
Centre, Earlsfort Terrace, Dublin 2

Respondent: Mr. Peter O'Brien BL instructed by Mr. David O'Brien Mc Mahon O'Brien Solicitors Mount Kennett House Henry Street Limerick

Respondent: Mr. G. H. representing himself

Background:

These cases are before the Tribunal by way of the employer who is the appellant appealing the Decision of a Rights Commissioner ref: PE78397/09/MR and 27 others under the European Communities (Protection Of Employment) Regulations 2000, Protection Of Employment Act, 1977.

PROTECTION OF EMPLOYMENT ACT, 1977

Obligation on employer to consult employees' representatives.

9. —(1) Where an employer proposes to create collective redundancies he shall, with a view to reaching an agreement, initiate consultations with employees' representatives representing the employees affected by the proposed redundancies.

(2) Consultations under this section shall include the following matters—

(*a*) the possibility of avoiding the proposed redundancies, reducing the number of employees affected by them or otherwise mitigating their consequences,

(*b*) the basis on which it will be decided which particular employees will be made redundant.

(3) Consultations under this section shall be initiated at the earliest opportunity and in any event at least 30 days before the first dismissal takes effect.

Obligation on employer to supply certain information.

10. —(1) For the purpose of consultations under section 9, the employer concerned shall supply the employees' representatives with all relevant information relating to the proposed redundancies.

(2) Without prejudice to the generality of subsection (1), information supplied under this section shall include the following, of which details shall be given in writing—

(*a*) the reasons for the proposed redundancies,

(*b*) the number, and descriptions or categories, of employees whom it is proposed to make redundant,

(*c*) the number of employees normally employed, and

(*d*) the period during which it is proposed to effect the proposed redundancies.

(3) An employer shall as soon as possible supply the Minister with copies of all information supplied in writing under subsection (2).

In opening counsel for the employer explained that communication with the employees took place on three levels. 1. General communication to all. 2. More directly by individual unit managers and pre-prepared presentations. 3. Letters addressed to the affected employees.

The minister was informed by letter in compliance with legislation. S. 9 was opened to the Tribunal "…….30 days before first dismissal …" Counsel opened a letter addressed to an employee and contended that the Rights Commissioner concluded that the form of letter offended S.9 of the Act and that the letter constituted a form of dismissal.

The letters of 08th January 2009 was nothing more than an indicative letters and provides estimates and not specifics. Not a single employee was served with notice before April 2009.

Counsel argued that regarding the RC decision he would say that the employer did not give notice. Counsel opened cases c-188/03, Junk –v- Kühnel and Fujitsu Siemens
The fujitsu decision is clear whether it is too early to consult.
It is also incorrect to conflict the strategic decision and the (delivering of a decision).
The point counsel makes from the Authorities is that it is clear whether it is too late to consult employees or too early to consult

Correspondence to the employees was opened to the Tribunal. No employees got a letter of notification of termination before April 01st 2009.

The submission is that regarding S. 9 the employer ticks all of the requirements of S. 9.

1. The employer did not start the consultation too late.
2. By reference to the fujitsu case there was no question of the employer having to consult any earlier because of the strategic to migrate was the employer decision.
3. There is no prohibition in the employer dismissing employees whilst the consultative process is on-going provided …….. The RC wrongly decided that the employer started to dismiss before consultation.

Regarding S. 10 the RC was 100% correct that there was an extensive body of (consultation/communication). So there was no breach of S. 10

Appellant case:

The Tribunal heard evidence from the site HR manager for the manufacturing area at the time of the redundancies. There were approximately 2800 employees in the company and approximately 2000 worked in manufacturing. He arranged a meeting for 08th January 2009. He was involved in subsequent meetings and in the group chaired by a Mr. R.

The witness was asked if letters of termination of employment dated 08th January 2009 were sent to employees and he replied "No". He explained that previous redundancies/ redundancy processes were made available on the intranet, however some employee had not got access to the intranet so they decided to (send letters); employees wanted to know two things, 1. when their jobs might end and 2. what severance that they might get. The redundancy was calculated at six weeks payment per year of service and there was a cap involved.

The first presentation (regarding the redundancies) was on 08th January 2009. then there was a meeting on 13th January 2009, to meet with employees that they needed to consult with in order to comply with legislation. They also met to get feedback from the employees. Some of the concerns were that the total sum was a cap of one year's pay and another was that the weekly pay was based on a basic weekly pay. Also why didn't the chief executive make an announcement.

They met the site team again on five separate occasions. Documents for a meeting on 11th February were opened to the Tribunal. Minutes of meeting of 11th February were opened to the

Tribunal.

The witness explained that the message to employees was the schedule for redundancies and "product transition".

The first group of redundancies was to be in May 2009 and 400 employees did leave in May. Some employees had volunteered to leave early and the company accommodated those employees.

A document was opened to the Tribunal that contained every question that was asked by the employees' representative group at a meeting. The questions and answers were placed on the intranet.

In cross-examination the witness was asked if the decision was made i.e. "you will be leaving" in letter 08th January 2012, he replied "no", that it was a genuine attempt to address questions that is if the employee was asked by their family when their jobs might end and what severance that they might get. It was put to the witness that there was certainty that the jobs were coming to an end he replied "no the letter is not definitive enough, for instance to get mortgage protection". He further explained that the intent of the letter was to reach out to the employees.

Respondent case:

The Tribunal heard evidence from DR who was an employee with the respondent from 2008 to 2009. He explained that in the latter part of 2008 were rumours / speculation and a report in the New York Times about the Respondent company having made a decision regarding the company situation in the west of Ireland.

At a meeting in January 2009 management told the employees that the company was ceasing production in the west of Ireland and moving production to Poland. There would be a loss of 1900 jobs and people were shocked. The management were asked if jobs could be saved and they said no. The witness opened his letter dated 08th January 2009 to the Tribunal. His understanding was that his job was gone.

The witness was amenable to taking a redundancy package and leaving:
At the end of January he approached a person in the respondent company and requested a meeting. He met and asked if there was any chance of something being done about his redundancy and also if the redundancy package could be improved. He also said to him that if the redundancy package was improved he would "leave on Sunday night and you would heard no more from me".

Closing arguments:

Counsel for the employees contended that the employer did not consult with the workers regarding the redundancy and there is an obligation on the employer to do so. The consultations must include the possibility of avoiding redundancies, the basis on which it would be decided which particular employees would be made redundant and the consultations should be initiated at the earliest opportunity and in any event at least 30 days before the first employee is dismissed. The requirement is real and meaningful. That is a root decision for the Tribunal.
Ion 8th January it was made clear a decision had been taken to make redundancies. The type of language used in communication can only mean that your employment came to an end.
A decision had been made to make redundancies and notification had been given to the employees. Therefore any consultation after the decision being announced … so there was no meaningful consultation.
The decision regarding redundancies had been taken some time prior to 08th January 2009. The discussions after that were about severance.

Regarding S. 10 counsel argues that if the employee succeed regard S. 9 it must follow that they succeed regard S. 10

GH:
It was argued by GH who represented himself that at no stage was it mentioned that workers had representation "We were not allowed a committee". He also stated "I never had a chance to negotiate or to sort out my redundancy"

Counsel for the employer contends that there is no evidence bar something that is an administrative error (or not) that any notices issued before 05th May 2009. Neither of two letters could be constituted as a termination letter.

Counsel opened: "It must therefore be held that in circumstances such as those in the case in the main proceedings, the consultation procedure must be started by the employer once a strategic or commercial decision compelling him to contemplate or to plan for collective redundancies has been taken".

Regarding S. 10 the Rights Commissioner was correct.

Determination:
Having heard all the evidence and submissions of the parties, including Mr. GH who was self-represented, the Tribunal makes the following Determination:

Regarding S. 10 of the Act the Tribunal upholds the Decision of the Rights Commissioner.

Regarding S. 9 the employer is entitled to make a strategic decision and the Tribunal is satisfied that the meeting of 08th January 2009 was the commencement of this process. The Tribunal

unanimously determines that the complaint by the Respondent is not well founded and the Appellant employer is not in breach of S. 9 of the Act Accordingly the Rights Commissioners Decision is Upset.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)