

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE

UD1833/2010

claimant

Against

EMPLOYER

respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms F. Crawford B.L.

Members: Mr F. Moloney
Ms M. Maher

heard this claim at Dublin on 20th January 2012
and 28th March 2012

Representation:

Claimant(s): Mr. Patrick Dillon BL instructed by Sinnott & Company, Solicitors,
Belgrave House, 15 Belgrave Road, Rathmines, Dublin 6

Respondent(s) : Ms. Dawn Noble, and Caoimhe Scollard IR/HR Executive, IBEC,
Confederation House, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

Respondent's Case

The HR manager told the Tribunal that the respondent was involved in electronic security. In mid April 2010 the respondent announced redundancies. The respondent had a number of problems in that there was a backlog of dockets and it could not invoice clients. The respondent had looked at different ways of doing this. In 2010 the delay in invoicing clients was up to two months and it embarked on restructuring. It worked and merged resources differently and looked at roles in the respondent. The respondent had two operation supervisors, the role comprised three parts, service maintenance, administrative and dealing with queries from technicians it had to look at the administrative role.

It had a technical manager and he was the central person to deal with technical queries and he was responsible for upskilling. Technical managers provided solutions for problems and were IT specialists and no other employee had his experience. Dockets had to be completed for invoicing and signed and then given to the technician. This is now done by administration. The claimant and his colleague were given the opportunity to apply for the post of Operations

Supervisor. No one else could apply for these posts internally. When the claimant and his colleague were not interested it was offered to other employees internally. The technical manager ensured that the technicians did their job. T applied for the service engineer and is still with the company.

She outlined the job specifications of an operations administrator and an operations supervisor. She spoke to the claimant and he told her he would discuss the matter with his wife. She sent an e mail to the claimant dated 19th April 2010 regarding the decisions he was faced with. She thought the claimant might revert to her on Monday but he did not do that.

She drafted two letters dated 30th April 2010 and 10th May 2010 which were signed by the general manager. The claimant was given the opportunity to put forward alternatives. The claimant had not signed an RP50 but a cheque issued to him and it was cashed.

There was an issue with the last pay slip and this was resolved. She did not approach the claimant as she felt he may not have wanted the role and it would have been unfair.

In cross examination she stated that there were no notes taken at the meeting other than the final document. She did not engage with the claimant she knew that there were several issues discussed with employees.

The 15th April 2010 was the first time that the claimant would have been aware of redundancy. This was a proposal and employees were given the opportunity to put forward alternatives. This was not the first time that redundancies were implemented and employees had reverted to the respondent before and applied successfully. She disagreed that 20% of the claimant's time was spent undertaking work on invoices. The respondent now has one person managing employees. It ascertained how much time needed to be spent on it. The respondent had an issue whereby invoicing was not being completed. Forty to forty five per cent of the claimant's time was spent on technical duties and five per cent on queries. PA was his original manager. At the moment 100% of resources are managed by one person. When she was asked if she knew exactly what was being done by the claimant she replied that the operations manager Mr. W had done that. It would not be possible to restructure and have one person in the claimant's role. All the claimant's tasks were still being performed and the skills were not different. A matrix was done in 2009 and this resulted in the selection process. The matrix would not be applied unless the claimant applied for the post. She is absolutely certain the matrix was not applied.

The matrix was not applied to engineers. The claimant would have been aware of the Matrix but the respondent did not apply that matrix. If the two had applied for the role the respondent would have applied the matrix. The claimant went sick on the closing date and she had already spoken to him. When she was asked if she was concerned she replied no that the claimant had told her he was going to go home and discuss it. She felt the claimant was given enough time.

When she was asked about what alternative roles the respondent could have given the claimant she replied that there was a split role on service engineer. This was offered in writing and his colleague was happy to take it.

In re-examination she stated that there were two roles available. The respondent needed to spend more time on administration and that is why it needed to restructure. Administration is now a full time role.

In answer to questions from the Tribunal she stated that the respondent did not know until the end of March what positions were going to be made redundant until they finalised proposals and they then approached the claimant and his colleague. Administration was undertaken by the claimant and T.

Office staff did not have a representative body. The supervisor role had the same pay and the administrative role had €30,000 per annum which was lower than what the claimant earned.

Claimant's Case

The claimant outlined in detail his extensive work history over the past forty years. On the 24th January 2000 he commenced employment with the respondent as a service supervisor. He serviced and maintained calls and he worked an average of fifty to sixty hours per week. He was responsible for seven engineers including the country engineers. This changed in 2008 and was split into two different areas. He liaised with HR regarding training. He dealt with customer complaints and in 2007 he supported the technical engineering division. He did not undertake invoicing work between 2003 and 2007. The new general manager in 2007 found errors in invoices and the finance department asked him to undertake this work. In December 2009/January 2010 there was a backlog of invoices and he spent two to four hours per week undertaking work on invoices. Eighty per cent of his time he dealt with engineers, service desk, customer meetings and day to day running of the service desk, stock and subcontractors, health and safety and engineers time sheets.

He was summoned to a meeting on the 15th April 2010 and an announcement was made relating to redundancy, this was the first time he had heard about redundancy. The installation department had little or no work and his department was very busy. He was given a new job specification for operations supervisor. There were no major issues with his employment, no disciplinary action, he was part of a team and he loved his job. He wondered why he was being made redundant and he could not understand why this was not discussed with him prior to the redundancy. He had a brief conversation with the HR manager on the 16th April 2010 and he was very upset. The next day he was unwell and went to the doctor.

By letter dated 15th April 2010 which was issued at the meeting he was asked to put forward any alternatives/revisions to the proposed redundancy before Monday 19th April 2010. He was informed that if he wished to apply for alternative positions in the respondent he should do so before Wednesday 21st April. He furnished the respondent with a medical certificate on the 20th April 2010. He had to advise the respondent the next day if he was interested in a job. He was in shock and he felt the respondent did not want him there.

He was not physically able to apply for other roles in the respondent company. He has not worked since he was made redundant. A supervisory vacancy was filled in May. He has been on disability benefit since April 2010. He felt cheated by the company and he would love to be back in work again.

In cross examination he agreed that he received a company handbook in 2008. He stated that the respondent was very busy. A new role was created for MW. Technical support took less than 10% of his time and the invoice element of his job took four hours a week. Seven employees reported to him. When put to him that he was asked to express his views he replied he did not have the time to ask questions. He did not know what was going on. He did not know what the salary for the position on offer was. He felt totally let down by HR. He did

feel it was a genuine redundancy. He felt that he should have been given more time.

When asked in relation to the roles that were available in the respondent he replied that an administrative role was €20,000 less than his salary. He did not apply for a position in the respondent as he was not able to do so. He could not understand why he and his colleague who both did great jobs were made redundant. He stated that at the moment he is not fit to work.

In answer to questions from the Tribunal he stated that employees were not aware of the situation in the respondent company. The respondent now has eighty employees

Majority Decision

Having considered all the evidence and legal submissions the Tribunal find (with Mary Maher dissenting) that the claimant was not unfairly dismissed.

Dissenting Opinion of Mary Maher

The claimant's case should be upheld because the conduct of the respondent in these circumstances was unreasonable and unduly harsh.

The claimant was a trusted senior employee. His work record over ten years appears to have been excellent, and his responsibilities were numerous. According to his evidence, which was not contradicted, it was usual for him to work 50 or 52 hours a week. He was in frequent consultation with his senior managers, and was on call at all times.

While the respondent was not obliged to consult employees on re-structuring and redundancies, it is difficult to believe that those involved did not foresee that the manner in which they announced the scheme would come as a shock and a betrayal of trust to someone of the claimant's status. Under cross-examination it emerged that the restructuring plan was drawn up by three people over three months. There were no minutes of the meetings.

The announcement was made on a Thursday, and the employees were told they had one week to apply for the new jobs. This in reality meant four working days. The redundancy was bound to be especially difficult for the claimant as the newly created jobs required no skills and involved no tasks that had not been required of him in the job he was doing, as also emerged under cross-examination.

In his evidence the claimant said repeatedly that he did not understand why they hadn't talked to him, and that he felt he should have been given time. He was entitled to four weeks notice of redundancy, and in compliance with this entitlement, the respondent wrote to him on April 30th and May 10th asking him to put forward alternatives. But by April 20th he was too ill to work and handed in a medical certificate.

He has been ill and unable to work since then. It is unfortunate that because he has not been in a position to attempt to mitigate his financial losses, the tribunal does not have jurisdiction to award compensation.

Determination

Having considered all the evidence the Tribunal find that the claimant in this case makes a claim for Unfair Dismissal in respect of the termination of his employment from the respondent in April 2010. The claimant had worked for 42 years continuously in the industry and 10 years with the respondent. The claimant claims *inter alia* that the redundancy was not a genuine redundancy/that there were no fair procedures used/ and that there was no consultation process or engagement with employees/ that alternatives to redundancy were not explored and that the conduct of the respondent was unfair and unreasonable.

The Tribunal has carefully considered all the evidence heard over the two days of this hearing. The Tribunal has also assessed the legal submissions made at the hearing. The Tribunal has also had regard to the written legal submissions made by both parties subsequent to the hearing addressing the issue of calculation of loss should the Tribunal find that the claimant was found to be unfairly dismissed in circumstances wherein the claimant has been in receipt of Disability Benefit since the termination of the employment in 2010.

Following the assessment of all the evidence, the Tribunal concludes that the termination of the employment by reason of the redundancy of the claimant by the respondent was not an unfair dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2007. The claim therefore fails. In those circumstances, it does not fall on the Tribunal to assess the matter of loss.

Whereas, it is not a matter for the assessment of the Tribunal in the present circumstances, the Tribunal is of the view that any psychological reaction/injuries suffered by the claimant manifested after the decision to terminate the employment and therefore not properly within the jurisdiction of the Tribunal to determine.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

