

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE *-claimant*

CASE NO.
UD847/2010
RP1154/2010

Against

EMPLOYER *-respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms D. Donovan B.L.

Members: Mr J. Hennessy
Mr F. Dorgan

heard this claim at Waterford on 8th February 2012

Representation:

Claimant: Mr. Eoin O'Sullivan B.L. instructed by
B M Cahill & Co, Solicitors, 14 Catherine Street, Waterford

Respondent: Bowe O'Brien, Solicitors, 1 Adelphi Quay, Waterford

The claim under the Redundancy Payments Acts 1967 to 2007 was withdrawn at the outset. That a redundancy situation existed within the respondent is not in dispute; this is a case of unfair selection for redundancy.

Respondent's Case

The auditor for the respondent gave evidence of the financial details of the company and the need for redundancies. That there was a need for redundancies is accepted by the claimant.

The Chairman (MG) who was in that position since November 2008 gave evidence. MG was a founding member of the respondent which is a fish co-op. His role includes debt collecting, liaising with the Department of Marine and looking after all insurance details and generally overseeing the operation of the respondent. There was a sub-committee of the Board that met weekly to implement cost cutting measures. This sub-committee consisted of MG, the claimant and two other people; the outcome of these meetings were given to the Board. The claimant was part of the team deciding the cost cutting measures including a reduced hours programme.

The claimant was informed that he would have to reduce his hours and take a 20% pay reduction. The claimant responded on the 26th of August 2008 querying whether other office staff members have had their hours and salaries reduced and if it was applied pro rata and said he would consider his position further on receipt of a response. The claimant was not a member of the co-op. Short-time hours had been discussed with the claimant but he refused the offer stating it was a 24-hour job.

At the January 2009 Board meeting it was proposed to make four staff redundant, leaving only the claimant and two others (the secretary and a landing operative). At the July 2009 Board meeting it was decided to make the claimant redundant along with the last landing operative. It was decided that the board members would run the co-operative *'like a family business; we'd do everything ourselves.'*

As MG was the only person not a full-time fisherman it was agreed that he would take over the claimant's management role. MG does everything from landing fish and loading lorries to the sales and auction of the fish. MG lives beside the harbour so is available to do all the unsocial hours work. If it is busy casual staff are employed to help. The committee asked how much salary it would take for MG to do the claimant's role and a salary of €30,000.00 was agreed with the Board. MG now fulfils the claimant's role and continues in his duties as Chairman. Prior to taking up the claimant's duties MG was in receipt of €15,000.00 for his role as Chairman/C.E.O. so he now earns a total of €30,000.00. MG's salary was not decided until after the claimant's redundancy as it took him some time to decide what was reasonable to ask the respondent to pay.

In 2002 when the then Chairman retired the claimant took over the duties until a new Chairman was appointed 9 months later. In 2003 the claimant applied for the role of C.E.O. but was unsuccessful. The C.E.O.'s role and the Chairman's role were basically the same but the C.E.O. was not a member of the Board. When the C.E.O. left in 2006 the claimant did not take over his role and the alternate title of 'manager' was used instead. It was decided that the Chairman should take a more active role in the operation of the respondent so on the C.E.O.'s exit in 2006 the Chairman was granted a salary of €15,000.00 and took over those duties. The claimant was not offered the role of C.E.O.

Another member of the Board (MS) gave evidence. He was present for all the Board meetings and states that it was never a choice between the claimant and MG. The claimant had never been a Board member and would not have the necessary accounting knowledge to be a member of the Board.

Claimant's Case

The claimant's role in the company included dealing with all financial aspects of the business. He was also involved in the P.R. and responsible for liaising with the Department of the Marine. In 2002 the then Chairman retired. The claimant was asked to take over the role until the Chairman was replaced. The position of C.E.O was established but the claimant was unsuccessful in securing this position. The successful person got the job because he was an accountant. When the C.E.O left in 2006 the claimant filled that role as 'manager'. As manager the claimant did everything within the respondent. The fact that the claimant did not live beside the respondent premises was not an issue – his predecessor had commuted to work from England Monday to Thursday.

The claimant took two pay cuts; a 10% cut then a 20% cut in salary. The 10% cut was actually a raise that he never received. In November 2008 when MG took over the claimant's role remained the same but MG would look at the financials and do some debt collecting work. MG told the claimant that he was being made redundant even though he offered to do the job for half his salary. MG is now doing the claimant's job.

The claimant gave evidence of loss and his attempts to mitigate his loss.

Determination

Having considered the evidence adduced at the hearing the Tribunal finds that the Respondent had a need to make staff redundant due to economic difficulties. The Tribunal finds that the selection of the claimant for redundancy was not unfair because there was no suitable alternative employment to offer the claimant other than the role of CEO or employment at a salary of €15,000. The Tribunal finds firstly that the respondent was entitled to retain its CEO because the input of the CEO would be crucial in efforts to save the respondent enterprise going forward, secondly the Tribunal is not satisfied that the claimant would have worked for the considerably lower salary that the CEO earned and thirdly that the claimant would have worked for €15,000. Accordingly the claimant was not unfairly dismissed but was dismissed by reason of redundancy. The claim under the Unfair Dismissals Acts 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)