

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE
-claimant

CASE NO.
UD734/2010

against

EMPLOYER
-respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms D. Donovan B.L.
Members: Mr J. Hennessy
Ms S. Kelly

heard this claim at Kilkenny on 28th September 2011

Representation:

Claimant: Ms Emer Foley, Reidy & Foley,
Solicitors, Parliament House, Kilkenny

Respondent: Mr. Stephen O'Sullivan BL instructed by
JJ O'Sullivan Solicitor, McGuire Desmond, Solicitors,
5 Lapps Quay, Cork

Respondent opening:

The respondent contends that the claimant was made redundant. The claimant was a full time van sales driver. There were eleven full-time van sales drivers. One year prior to redundancy the company had losses of €1.2 million. They had to reduce the routes/drivers from eleven to nine. The respondent used a performance based matrix to select for redundancy. The claimant scored the lowest score. The claimant was paid redundancy. One year later six other driver positions were made redundant and these were selected on a last-in-first-out (LIFO) basis.

Claimant opening:

The claimant contends that there was no discussion regarding the redundancy. The claimant contests the performance selection.

Respondent's case:

The Tribunal heard evidence from the HR manageress. She explained that there were ten full time van routes and one full time relief driver, this being eleven full time van sales persons. The van drivers deliver products and also take orders for the products.

The respondent is audited annually by the company who manufacture the products and that they sell, distribute and see that they stock the customer fridges properly in accordance with a "plan-o-gram" that is provided by the manufacturer.

The company turnover was €1.3 million. The year prior the claimant was made redundant they had a loss of €1.2 million. The respondent made a decision to re-structure and remove one of the routes. The Waterford route was not a good performance route for sales. The Waterford driver was not selected for redundancy because they felt it would be unfair to select him because the drivers are assigned routes and have no choice regarding their routes. The witness and the general sales manager designed a selection criteria matrix for redundancy.

The witness gave evidence as to meeting the claimant. Also evidence regarding the claimant's disciplinary record; he had a written warning and a final written warning. The claimant was selected for redundancy.

The witness explained that a year after the claimant was made redundant they had to make more employees redundant. There were six more redundancies and three employees transferred. The selection for those redundancies was based on LIFO. In cross-examination the witness explained that the respondent is a sales company and that they had to keep their best employees, their best sales people.

The Tribunal heard evidence from the sales manager. He explained that he managed the claimant, his sales and his customers. He was involved in drawing up the criteria for redundancy.

On 02nd June 2008 he received a phone call from a customer who told him that he did not want the claimant on his premises. The customer said that the claimant was not stocking the shelves properly and that they had also run out of stock. He spoke to the claimant and the claimant "got short" with him and said "you can stick your job". On 08th August 2008 another customer phoned to say that he did not want the claimant to service his fridge and that he wanted someone else. On 28th August 2008 another customer who did not "see eye-to-eye" with the claimant phoned to say that he had no stock in his fridge and that the claimant was "throwing" stock into the fridge.

The witness gave evidence as to the claimant's evaluation and that the claimant had a customer care score of one out of five.

The Tribunal heard evidence from the general manager. He explained that the respondent company is a concessionaire and have a licence to sell products for a manufacturer.

He got a lot of feedback about the claimant and also a lot of complaints from somebody in the manufacturing company. He spent a day with the claimant and when they finished that day the claimant told him that he now realised what is involved in getting the fridges correct. The witness gave evidence as to difficulties between the claimant and customers. The claimant received a final written warning.

In cross-examination the witness explained that he had not got a grievance with the claimant; he had an issue with the claimant's work standard. He was asked if he told the claimant that two other people were being made redundant and he explained that two other part time staff would have been let go at that time of the year.

Claimant's case:

The claimant gave evidence to the Tribunal. He explained that he had very good relations with most shop managers and stores. When he took over the route he doubled the sales figures for the route.

In September 2009 the HR manageress told him that the General Manager wished to talk to him. He met the GM and he was told that the company had to make three redundancies. One of the redundancies was to be in a certain area one in another work area and also the claimant's position. He asked the GM why and he was told that it was because of work performance and not because of sales. The claimant told the Tribunal that he felt like he had been fired.

He had been asked to do an extra two hours extra that day (or in or around that day). He phoned the person who had asked him to do this and asked the person if he knew that he was to be made redundant and was told yes. He thought that the company was looking for an excuse to fire him.

After he had left the respondent he received ten or eleven calls from customers asking where he had gone. The van sales route that he did is still there and another employee is doing that route. The Waterford route that the other employee did is no longer in operation.

Determination:

Having considered the evidence adduced at the hearing the Tribunal finds that there was a genuine redundancy situation in circumstances where due to a down-turn in the respondent's business the sales/deliveries routes were reduced from ten to nine routes resulting in the need for one less van salesman. That there was a down-turn in the business of the respondent company is supported by the fact that a further six salesmen were made redundant a year later. When the routes were reduced from ten routes to nine routes the route the claimant worked on still remained. Therefore, the Tribunal looked very carefully at the selection of the claimant for redundancy at the time. The Tribunal are satisfied that the respondent selected the claimant for redundancy in the best interests of the company. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

