

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE
-claimant

CASE NO.
UD648/2010

against

EMPLOYER
-respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. T. Ryan
Members: Ms J. Winters
Mr T. Brady

heard this claim at Dublin on 14th July 2011

Representation:

Claimant: Mr Barra O'Coirlain, John Glynn & Company, Solicitors, Law
Chambers, The Village Square, Tallaght, Dublin 24

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

Respondent's case:

The Tribunal heard evidence from the company director. He explained that the company has a wholesale and retail side of the business. They have four shops in Blanchardstown, Lucan, Tallaght and Swords and employ 80 people. In the last three years the carried out redundancies and redundancies were necessary.

In 2009 the state of the business was bad and there was a 14% drop in business. The company suffered double exposure because the business was based on immigrants, Polish and Lithuanian. In 2009 the company went from making a profit to making a loss.

Since 2008 the company managed to increase the wholesale part of the business. They also introduced expanded credit facilities to their customers. The company dropped their prices and therefore had a lower margin of profit.

Regarding the redundancy matrix the company took account of the length of service, Last-in-first-out (LIFO) and the employee disciplinary record. Also only the employees who

were employed in the retail part of the business were considered as the wholesale employee roles were different such as forklift drivers. In total they had 89 employees; the majority were employed in the wholesale area. The sales assistants were in the retail area of which there were 27 to 28 employees.

The employees were made aware of impending redundancies on 20th November 2009. The company did not replace the staff that they had made redundant; "the whole principle of redundancy is to reduce the wage bill". The company did bring staff from another store; "staff were moved from other stores". No new staff were hired for the Tallaght store. There were 89 staff then and now there are 87. The witness expanded on this by explaining that the wholesale area of the business expanded. No new sales staff were taken on since.

Regarding the redundancy selection matrix and discussions with staff there was no discussions in respect of the matrix with the employees as the company treated it as an internal matter. The company has no HR department; the witness explained that he himself dealt with HR matters.

In cross-examination the witness stated that he was managing the respondent in Ireland for the last eight years. The respondent is an import/distribution business. It supplied some retailers and distributed pre-packed foods. Out of the 89 staff 28 were employed in retail, 8 to ten were office staff and approximately 50 in wholesale. The claimant worked in the delicatessen. He could not transfer the claimant to wholesale as she would have to lift heavy items on pallets and load and unload the pallets. Special training was needed to work in wholesale. The respondent had 4000 types of goods in wholesale. The training usually took three months. A checkers training took three months. Employees were paid for the three months while undergoing training. He did not ask any employees if they wanted to work in wholesale. He did not discuss a reduction in hours. Six employees were made redundant on the floor area.

The witness disagreed that his procedures were flawed. Regarding certain procedures he thought at the time that he could make employees redundant without consultation. He agreed in cross-examination that that he was incorrect. He did not know at the time that he had to explore lesser hours or pay cuts. His solicitor advised him that he had to present it to his employees. The criteria used in implementing redundancies were service and disciplinary.

Arising out of re-examination the witness stated that he was the only person involved in the matter. It was not the respondent's preference to dismiss. He did not have a personal reason to or a personal preference to dismiss.

Claimant's Case

The claimant told the Tribunal he commenced employment with the respondent on the 10th June 2008. His employment ended on the 28th November 2009. He obtained alternative employment but it terminated three weeks later. He sent out many CV's and he is still endeavouring to obtain employment. He applied to employment agencies, he applied for a position of driver and to construction companies. He had no personal issues with the MD.

Determination:

The respondent did not consult with the employees regarding the redundancies. The respondent did not ask if any of the employees wished to volunteer for redundancy. The respondent did not ask the retail employees who were selected if they wished to work in the wholesale area,

regardless if the training took three months as any employee new to the area would need three months training in any event. The respondent did not consider a reduction in working hours or ask the employees about a reduction in hours.

The claim under the Unfair Dismissals Acts, 1977 To 2007, succeeds. The Tribunal determines that compensation be the most appropriate remedy and awards the claimant the sum of €7,280.00.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)

