

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.
UD2272/2010

EMPLOYEE

against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms S. McNally

Members: Mr D. Hegarty
Ms P. Doyle

heard this claim at Cork on 7th March 2012

Representation:

Claimant: Mr Jerome O'Sullivan, J W O'Donovan,
Solicitors, 53 South Mall, Cork

Respondent: In person

Respondent's case:

The Tribunal heard evidence from one of the directors of the respondent. The claimant worked as a foreman electrician. The work diminished by 25% in 2009. At some time in 2009 the claimant phoned the respondent and told them that he had no work to do for that week and none for the following week. They did not have enough work for the claimant. Two of their clients told them that they would not have enough work. The claimant was spending a lot of time trying to find work to do or to get work from clients.

The company did employ an estimator who priced work. The estimator left the employment and they did not replace him. At a meeting the claimant told them that there was not enough work for another worker and himself. They told him that they would try to keep both jobs intact. The claimant told them quite clearly that he would not work (solely) as an electrician. The claimant would not go to another named client location. The claimant wanted to stay in the location as foreman. They told the claimant that they had no work for a foreman.

The claimant had worked for them for 37 years. They were generous to the claimant and paid his VHI and FFP (Friends First Pension). At the meeting he and the other director told him that they could not afford to pay him. The claimant told them that he did not care about the extras and that he did not want to go back to an electrician rate. They told him that the only option was to make him redundant. The claimant said that he would accept redundancy and this

surprised the directors.

After some time the claimant asked to be paid redundancy. The company told him that they would process the paperwork. After some time they processed the claimant's redundancy. The claimant never complained once about being made redundant and he never questioned the redundancy

The Company felt that they had no choice as the claimant did not want to work as an electrician and they had no position for a foreman; they had a position as an electrician and he did not want to work as an electrician. The claimant volunteered his redundancy. The claimant has not been replaced. He has not been replaced with a cheaper option. They have no foreman now. On the day the claimant left the company asked him to re-consider and he said no. The claimant took one of their customers with him as his own customer and he purchased a van.

Claimant's case:

The claimant commenced working for the respondent in 1973. He worked as an electrician. From circa 1999 when bigger jobs arose he supervised other employees. The claimant explained that there were some main clients/contracts and that he was the primary electrician for those contracts.

In 1999 he had a meeting with his bosses and said that he was leaving. They did not want him to leave so they offered him a 20% pay rise and VHI and a pension plan. He accepted this. Up to this point he was never a foreman he was "on the tools, on my own". The foreman pay was 20% more than an electrician. His duties or role did not change and "continued to work on the tools".

Towards the end of 2009 he was called to a meeting with two directors. He was asked what his plans were for his future with the respondent. He was told that his pay would have to be cut and his VHI stopped and his pension reviewed. He did not respond to this. There was a discussion regarding redundancy. He was told that if pay cuts could not be implemented then redundancies would have to occur.

He phoned the respondent on 23rd November to tell them of his decision. He told the respondent that he was not going to take a pay cut or pension cut. He said that he was not going to go down to an electrician rate. He spoke to a director (JS) for the company and she told him that redundancy was an alternative. He asked her if he was being made redundant. He did not get a reply but she did say to him that he must be taking advice.

He phoned JS on 22nd December 2009 to confirm that he would be working over the Christmas period. JS again started to talk about pay cuts and if she could not cut pay then they would have to charge the clients more. He told her that was what she should do.

On or about 14th April 2010 he received a call from a director of the company who said the VHI and pension was stopped and that his foreman rate was not touched but she would re-visit this.

He had a meeting with two directors of the respondent on 07th May 2010. He was told by JS that things were slack and that he would have to be put on short time and JS mentioned an RP9 form. At no stage did he ask for redundancy or was he told that he was being made redundant from that day.

He subsequently got a form RP 50 on 25th May 2010. He contacted JS about the form as redundancy had not been discussed.

The claimant maintains that there was sufficient work for him up until his employment ended. Also that the respondent had their minds made up in 2009 with regard to his employment ending as they had asked him his intentions and this would not have been asked of a younger man.

Determination:

Having considered the evidence adduced the Tribunal determines that a genuine redundancy situation existed in this case.

The claimant had a rate of pay of foreman and performed that work/role. Because of a lack of contracts there was no further need for that role.

Having heard the evidence the Tribunal is satisfied that the claimant turned down the position offered, that of electrician, which had to include a reduction in pay.

The claim under the Unfair Dismissals Acts, 1977 To 2007, fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

