

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD455/2011
MN468/2011

against

EMPLOYER

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr T. Ryan

Members: Mr W. Power
Mr S. O'Donnell

heard this claim at Dublin on 12th July 2012

Representation:

Claimant: Mr Paul Henry, SIPTU, Membership Information, & Support
Centre, Liberty Hall, Dublin 1

Respondent: Mr Tim O'Connell, IBEC, Confederation House,
84/86 Lower Baggot Sreet, Dublin 2

The determination of the Tribunal was as follows:-

At the outset of the hearing the claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was withdrawn.

Respondent's Case:

The respondent is a provider of inflight catering. BM is the general manager. He gave evidence that the business is seasonal, cyclical, and is also reliant on the economic climate.

BM said that the claimant worked in dispatch dealing with 15 airlines. He was one of three people who did the job plus a supervisor. In the fourth quarter of 2010 because of seasonal decline and economic constraints it was agreed that the operation would be restructured. The operations manager consulted with the Trade Union and a selection process that included quality and performance for the previous six months was drawn up. Each member of staff was written to on 27th October 2010 advising them of restructuring.

A presentation took place on 2nd November outlining the selection criteria and a one- to- one consultation was held with the claimant on 11th November. The claimant was sent a letter dated 11th November terminating his employment on the 12th and advising him of his redundancy entitlements.

BM only became involved at the appeal stage. The claimant appealed the decision for selection as he felt there was bias and there was other more appropriate candidates, for example someone on a student visa. An appeal meeting was held on 23rd November. BM talked to his supervisor and considered the six months selected as the ones where the best records had been kept. It was down to the quality of the work and the claimant made mistakes. He upheld the decision to make the claimant redundant.

Under cross examination BM said that he had carried out a full revision for the appeal. He interviewed staff and felt the assessments done by the operation manager were in order. Temporary lay-off or any other options were not considered. The claimant received zero markings for quality but had received no written warnings. He did receive verbal warnings.

Claimant's case:

JK stated that he began work in 2007 for the respondent. It was a high pressure job with a 5.30 am start to get meals ready for transatlantic flights by 9am. On the morning of his one-to-one meeting he had difficulty in getting representation. His union representative was involved in an accident and a second representative was not able to attend. JK asked by e-mail for the meeting to be postponed. SL arrived within a few minutes and told him to go to the office. SL said he was going to sort him out. The claimant said he was aware of the criteria but never saw his scoring. He did have an altercation with his supervisor where things kicked off and insults were thrown, he knew things were never the same after that and was not surprised that he had been selected for the redundancy. The six months that were taken into consideration were for the period when he had the altercation and none of his other service was taken into account. The claimant considered he was unfairly selected and everyone knew it. He found it difficult to get a reference from the respondent and eventually was successful in securing a job for a lesser rate of pay in December 2011.

Determination:

The Tribunal has carefully considered the evidence adduced. The claimant has made the case that he was unfairly selected for redundancy at a time when the respondent company was being forced to re-structure, the cause being an accepted downturn in business.

The Tribunal determines that the claimant was unfairly selected for redundancy and was dismissed.

Section 6(3) of the Unfair Dismissals Act, 1977 as amended by Sections 5(b) (a) of the 1993 Act states that "in determining if a dismissal is an unfair dismissal regard may be had, if the rights commissioner, the Tribunal or the Circuit Court, as the case may be, considers it appropriate to do so to the reasonableness or otherwise of the conduct (whether by act or omission) of the employer in relation to the dismissal".

The Tribunal therefore determines that the redundancy of the claimant by the respondent was an unfair dismissal within the meaning of the Unfair Dismissals Acts, 1977 to 2007.

The evidence of the claimant in respect of his success in obtaining alternative employment is noted and it is determined that the claimant made reasonable efforts to mitigate his loss in this regard.

The Tribunal awards the claimant a sum of €12,500 having allowed for a redundancy payment of €

3,659.89 paid to the claimant and the Tribunal so determines.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

