

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE(*appellant*)

CASE NO.
UD387/2011

against the recommendation of the Rights Commissioner in the case of:

EMPLOYER(*respondent*)

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr E. Harrington

Members: Ms M. Sweeney
Mr D. Mcevoy

heard this appeal at Cork on 4th July 2012

Representation:

Appellant(s) : Ms. Colleen Minihane, Siptu, 18 Lower Patrick Street,
Kilkenny

Respondent(s) : Mr. Edmond W Cogan, Fitzgerald, Solicitors, 6 Lapps Quay,
Cork

The determination of the Tribunal is as follows:

This case came before the Tribunal by way of an employee appeal of a Rights Commissioner recommendation under the Unfair Dismissals Acts, 1997 to 2007, reference r-091541-ud-10/pob.

Appellant's case

The appellant commenced employment with the respondent on 1st March 1999 as an Optical Technician. He did not receive a contract of employment and was not aware of a grievance procedure. The appellant asked on a number of occasions to be considered for a dispensing course but was not given the opportunity to up skill. In January 2010 he was made redundant with no alternatives offered. At the time, the appellant was the longest serving staff member. A new employee was taken on the week the appellant ceased employment, in part to cover floor work.

The appellant believes the only reason he was singled out was as a result of taking a civil case for bullying against the company.

During cross-examination, the appellant stated it was the requirement of the college to have the backing of the employer in order to take the dispensing course.

The appellant believes the workshop is still open as the business cannot survive without it.

In reply to the Tribunal, the appellant stated that he was the only employee made redundant at the time. He could have carried out floor work as well as lab work but he was not offered it. The option of a three day week could have been considered by the respondent. The claimant was told the other company business would close and that the member of staff would be made redundant but it transpired that employee was kept within the company.

The appellant received statutory redundancy from the company. He is still unemployed as it is a small circle in this type of business.

Respondent's case

Mr. C stated the company was suffering severe drops in turnover. The Accountant made a recommendation to close the workshop. The appellant was the sole employee in the workshop. Mr. C went to the workshop to tell the claimant what was going to happen at the meeting. The workshop is no longer open. The workshop work was outsourced and proved to be a success. The appellant was not denied any additional skill training. Mr. C told the appellant he would give him time off for the dispensing course but he could not afford to pay for it. The respondent paid for two other employees to attend the course.

The appellant was made redundant as part of a cost cutting exercise. There was no hidden agenda.

During cross-examination, the witness stated that all options had been considered with the Accountant. The appellant left before the meeting with staff commenced after he had been told about his redundancy. There is no lab work carried out on the premises any longer.

RO'B worked in Accounts and a standard contract was offered to all staff but the appellant said he would not be discussing a contract. In cross-examination she said she handed a copy to the claimant but he never signed it. It was put by the claimant's representative that a contract was requested in writing by the union on 18th December 2009. The respondent was trying to put one in place for staff but the appellant said he had an "implied contract".

The respondent denied opening two companies since the end of the appellant's employment.

Determination

The Tribunal finds, having regard to all the facts in this particular case, that this was a genuine case of redundancy. As a result of a severe drop in turnover, the Respondent chose to close its workshop (where the Appellant worked), in order to reduce costs. Thus, a position for an Optical Technician no longer existed. The Respondent was not in a position to offer an alternative post for which the Applicant was the most suitably qualified or appropriate person.

Accordingly, the Tribunal finds that the Appellant was not unfairly dismissed within the meaning of the Unfair Dismissal Act and the Tribunal affirms the decision of the Rights Commissioner.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)