

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE

CASE NO.
UD447/2010
WT188/2010

-Claimant

against

EMPLOYER

-Respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms D. Donovan B.L.

Members: Mr J. Hennessy
Mr F. Dorgan

heard this claim at Kilkenny on 27th September 2011
and 14th December 2011

Representation:

Claimant: Fanning & Kelly, Solicitors, 2 Hatch Lane, Hatch Street, Dublin 2

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

Background:

The respondent is a radio station and the claimant was the head of production.

Respondent's case:

The Tribunal heard evidence from the chief executive of the respondent company. He

In 2009 the company was in financial difficulties. Staff had left in 2007 and 2008 and they were not replaced. In 2009 a sales person left and they did not replace the person. An administrative position was redundant in 2009. The company losses were bad in 2009. He was away in June 2009 and when he returned there was zero sales activity. The company loss was in the order of one million euros. There was a state of emergency in the business and they had to consider a range of measures to continue the viability of the company.

The company reduced salaries and sought to reduce head count. Regarding the wage cuts the company was aware that they had to be implemented by consent of the employees and to do so equitably. The cuts were implemented.

In July 2009 he called a staff meeting and told the employees that the company was in a serious situation and they would have to take drastic measures. He told the employees that he would work for a period without taking a salary. He did this for a period.

The company consulted advisors regarding reducing head count and were advised to engage in a consultation process. The rationale for selecting the claimant was because of his function in sales/ servicing the service department. The work greatly decreased. It appeared to him to re-assign those (his) responsibilities and to make the position redundant and to outsource it. He had a meeting with the claimant to say that the situation might impact on his position.

Correspondence on the matter was opened to the Tribunal. The witness gave evidence as to meeting the claimant's representative.

The witness explained the reasons and rationale for the redundancies to the claimant and his representative. The redundancy decision was appealed. The claimant representative felt that the redundancy was not or should be voluntary. The witness explained that the management team felt it was not appropriate to rescind the redundancy as they could not operate the radio station if other positions were made redundant. They had allowed the claimant to put forward alternatives to redundancy.

Regarding the claimant's role and production duties, the programme presenter took on the production role and the music programme person took on extra duties of the production role.

Regarding another role of a consultant who was employed during the claimant's period of employment there was no overlap in that role and the role of the claimant.

The claimant appealed the redundancy and the appeal was heard on 4th September 2009. A director of the respondent heard the appeal. The director had not been involved in the process up to that time. The redundancy was upheld and a letter dated 15th September 2009 was sent to the claimant informing him of the decision and the reasons for same.

The company redundancy policy was opened to the Tribunal and put on record.

The witness gave evidence that two free-lance people had been employed in the company. One of these was from February to March 2010 and another for July 2010. Some 30% of the work they did related to the claimant's work. In 2010 they took on sales employees but these roles were not replacing the claimant's role these were new roles.

Claimant's case:

On the second day of hearing the claimant outlined his employment history in radio up to the time he commenced his employment with the respondent on the 13th April 2004. He applied for the position of presenter on a breakfast show with the respondent. However, he was actually appointed to the position of head of production which included the duties of producing radio advertisements and promotions. On occasions when a presenter was on holidays he filled in as required and from time-to-time he assisted with outdoor broadcasts. The claimant also outlined how he had presented a one-hour lunchtime programme for a period of one year ending in 2008.

The claimant attended the meeting on 15th July 2009 with the CEO and an adviser to the radio station. He was unaware of the purpose of the meeting. Minutes of this meeting were opened to the Tribunal. At the meeting the claimant was informed that his position was being made redundant and that the role would be distributed between other employees. The claimant was told that the respondent company would no longer have head of production as a stand alone position but would merge the responsibilities of the role into other roles.

Further meetings were held on 23rd July 2009 and 11th August 2009. It was the claimant's evidence that the CEO informed him that there was no alternative position available at that time but that there was a possibility of a position becoming available on the sales team. The claimant understood that it was open to him to apply for this position but he did not have any experience working in sales.

The claimant made the case that a part-time colleague had not been made redundant and that another colleague who was employed as the deputy news editor was given a new presenting position at a lower salary as an alternative to redundancy. The claimant stated that had a presenting position been available he would have accepted it.

The claimant stated that he was not asked to consider a new position or accept short-time or offered work that was outsourced. He appealed the decision of the company to select his position for redundancy but the decision was upheld. The claimant gave evidence of loss and efforts to mitigate that loss. He has since secured alternative employment.

During cross-examination it was put to the claimant that he had in the past been reluctant to present programmes. The claimant refuted this. It was put to the claimant that at the meetings he had not put forward the fact that he would have considered an alternative such as presenting. The claimant stated that the company did not put forward this as an alternative either. It was put to the claimant that a presenting slot was not available at the time that his position was made redundant. The position arose at a later stage through negotiations with another employee who put forward that she was willing to present.

Determination:

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

On the second day of hearing the claim under the Organisation of Working Time Act, 1997 was withdrawn.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

