

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE - *claimant*

UD1234/2010

against

EMPLOYER - *respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr L. Ó Catháin

Members: Mr. J. Hennessy  
Mr. J. Flannery

heard this claim in Clonmel on 10<sup>th</sup> February and 30<sup>th</sup> April 2012

#### **Representation:**

Claimant: Mr. Aidan Leahy, Donal T Ryan, Solicitors, 89-90 Main Street, Cashel,  
Co Tipperary

Respondent(s): Mr. Tim O'Connell, IBEC, Confederation House, 84/86 Lower  
Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

#### **Preliminary Point**

The Tribunal was informed by the respondent's representative at the commencement of the second day of the hearing that the claimant had signed a compromise agreement and was given a redundancy payment including an ex-gratia payment of € 32,503.57 as a full and final settlement. The respondent said the Tribunal did not have jurisdiction to hear the claim.

Having discussed the matter, the Tribunal decided to hear the evidence relating to the claimant's signing of the agreement before deciding on the preliminary point.

## **Claimant's Case**

The claimant was called to a staff meeting where the staff were told the business was closing and chains would be put on the gates. The respondent had a branch of its business in Wexford and it was cheaper to keep that location running than where the claimant was based. The respondent was keeping the foreman and two clerical staff on to run down the stock on hand before closing the gates.

The claimant signed for and received his redundancy money. He was then asked by the management to stay on for a month and finished on the 2<sup>nd</sup> November 2009.

During cross-examination the claimant said his trade union was involved in the redundancy negotiations a month before he signed the compromise agreement. He agreed it was possible the plant had reopened following the redundancies and if he had known then what he knows now he would not have accepted the agreement.

The claimant said he was given a closing down payment of €7,000.

NP was the trade union representative at the time of the redundancies when the members told him the plant was closing. He met with the management of the respondent who told him the plant was closing and locks were to be put on the gates. The union agreed a deal with the company and negotiated a closing payment.

On the 2<sup>nd</sup> March 2010, he received a letter from the claimant saying the plant was in full swing. As far as the union was concerned, the agreement was signed on the basis of the plant closing.

During cross-examination NP said he was twenty years with the union and was aware the respondent had a company/union agreement. He did not tell the claimant to sign the agreement. It was his decision to do so.

It is possible management at the time of the redundancy agreement thought the plant was closing. NP had believed the plant was closing and it was a genuine redundancy.

## **Respondents Case**

EW is the foreman of the plant and has worked for the respondent for fifteen years. The claimant's main duties included loading blocks and driving a machine on site. At the time of the redundancy the plant got additional work and the claimant was asked to stay on for a month. The plant had a large amount of stock and EW believed the plant would be destocking and would close. After the claimant left, another employee drove the machine on site until Christmas that year.

In early March 2010, the plant began operating again. In February an employee transferred in from another plant and is still employed.

During cross-examination EW said the plant was not operating in October 2009 when the claimant was made redundant. He felt once the destocking was done he would also lose his job. In February 2010, another of the respondent's plants closed and their plant began supplying

materials to customers that used to be supplied by the plant that had closed

**Determination on Preliminary issue**

The Tribunal accepts that there was a genuine reorganisation within the Respondent Company and that the management of the respondent believed the plant was closing. The claimant signed a compromise agreement and the selection criteria used to decide on the roles to be made redundant were fair.

The Tribunal heard evidence that the claimant had discussed the agreement with his trade union and was given the opportunity to study the agreement prior to signing the document.

The Tribunal has carefully considered the evidence adduced at the hearing and finds that the claimant does not have an entitlement to have his case heard under the Unfair Dismissals Acts, 1977 to 2007.

Therefore, the claim under the Unfair Dismissals Acts, 1977 to 2001, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)