EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF: CASE NO.

EMPLOYEE *appellant* RP1221/2011

Against

EMPLOYER *respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath B.L.

Members: Mr. M. Flood
Ms M. Mulcahy

heard this appeal at Dublin on 3rd October 2012

Representation:

_____

Appellant(s): Mr John Rooney, 33 Hillcourt Road, Glenageary, Co Dublin

Respondent(s): Wendy Doyle, Wendy Doyle Solicitors, 20 Lower Baggot Street, Dublin 2
The decision of the Tribunal was as follows:-

Appellant's Case

The appellant told the Tribunal that he commenced employment with the respondent on the 30th June 2005 as caretaker until September 2007. He was then promoted to a supervisor of caretaker services. He supervised a mobile cleaning team and managed ten employees. His main duties were in reception, answering the telephone and collecting packages for residents. He booked taxis, took in laundry, held keys and he was the first point of contact.

He was laid off in November 2010 for thirteen weeks without pay. On the 5th November 2010 he was offered employment but not in a similar role. He was called to a meeting on the 28th January 2011 and he was given an option of casual/part time work on call for two days per week. The second option was he was given was work for two days undertaking the same duties as previously but there was no certainty in the job. The MD told him that this job was guaranteed for three months. He rejected this offer due to the wage uncertainty. He was on lay off for three months.

He decided that he would accept redundancy. He met with the MD in January 2011 and the MD told him he would not stand in his way. The claimant was asked to think about it. The MD told him that he would not stand in his way.

He telephoned the MD on Monday and informed him that he had accepted the redundancy offer. The MD told him that he did not have to make him redundant and he told him he must take up the offer and that was it. The MD told him that he would give him as much reception work as possible. He had health problems which the MD was aware of. Mobile cleaning work had a strong physical aspect and he could not undertake some cleaning work. His medical condition never interfered with his work. The MD offered him another position two days a week including a significant amount of cleaning work. He was not given a job specification and referred it to the HR office. He advised the MD that this was not a suitable offer. He did not resign.

In cross examination he stated that it was not a suitable alternative, he was a concierge, and he was offered a cleaning role and he could not undertake this work due to health issues. He was not capable of cleaning work. He used to play basketball but he does not play now, he has osteoporosis in his back and a twisted pelvis. He was asked to deputise for employees who were on holiday, this was temporary, and he paid for his travel expenses.

At the meeting on the 28 January 2011 the MD told him that he would not stand in his way.

Respondent's Case

The MD of the respondent company told the Tribunal that the respondent undertook cleaning, reception, gardening and maintenance of property. It had sixty to seventy employees. Due to a large contract which the respondent lost the company was in a difficult situation in November 2010. The appellant was laid off on the 5th November 2010 until the end of January. 2011. The respondent tried to survive and obtain new contracts. He endeavoured to seek alternative work for the appellant; the appellant was a very good worker and always reported for work on time.

On the 28th January 2011 the appellant was offered work for two days a week with the expectation of full time work in the same role If this were not possible he would have to look at the possibility of redundancy. He wrote to the appellant on the 28th January 2011 and he offered the appellant reception based work. By letter dated the 1st February 2011 the appellant rejected this offer. He was aware that the appellant had a health issue but he was never absent from work due to illness. On the 7th February 2011 he wrote to the appellant in relation to another offer of two days a week and it was guaranteed. The respondent had so many projects in the city he was confident that he could employ the appellant for thirty hours a week and that was guaranteed. The salary would be the same and the job was the same apart from working in a mobile vehicle.

In cross examination he stated that he could not recall if he contacted the appellant during the lay off period. He did not want to have to make the appellant redundant as he had worked with the appellant for a long time. All employees made their own travel arrangements to work. Part of the role the appellant was offered was similar to what he previously undertook.

In the new role that he was offered he would have been three days in one location and the remaining days in a different location. The appellant was aware that the respondent would

endeavour to minimise his travel. He wrote to the appellant on the 7th February 2011 but the appellant rejected the offer of mobile cleaning work on health grounds. A thirty hour week was a guarantee. He asked the appellant to submit his resignation within seven days but this was not a threat.

Determination

The Tribunal has carefully considered the evidence adduced. The appellant is making a claim for statutory redundancy in circumstances where at the end of a twelve week period of lay off the employer's alternative propositions of employment were not suitable and/or comparable to the position that he believed he had held for the preceding two and a half years.

The Tribunal is satisfied that the nature of the employment type was such that all employees would be expected to be flexible within the workplace. This is a company which by its very nature can only take on people willing to cover the maintenance and concierge expectations of its clients buildings across the city. There can be no doubt that the appellant's contract of employment specifically allows for movement and flexibility.

The respondent witness gave evidence of a considerable amount of effort having gone into the project and keeping the appellant in the employment of the respondent in circumstances where the concierge contract which the appellant had been exclusively performing had abruptly ended. The Tribunal believes that a suitable alternative was found and that the guarantee of reception/concierge as specified in their letter of the 7th of February 2011 was suitable alternative employment within the meaning of the Acts.

It is noted that the employer could only guarantee an average of a thirty hour week which might have involved a drop in the hours which the appellant had heretofore been expected to work i.e. 37.5 hours. It was hoped by the employer that in reality the 37.5 hour week would be attained but felt in making the offer that it could not be guaranteed.

Had the appellant continued in the short time situation he may very well have been entitled to claim redundancy. However this is now a moot point.

On balance the Tribunal does not accept this was a redundancy situation and the appellant resigned his position.

The appeal under the Redundancy Payments Acts, 1967 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)