

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE – *claimant*

UD1796/2010

against

EMPLOYER – *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. M. Gilvarry

Members: Mr. D. Morrison
Ms. R. Kerrigan

heard this claim in Letterkenny on 8th February 2012

Representation:

Claimant: Mr. Michael Shiel, Michael Shiel & Co., Solicitors, Ballyraine,
Letterkenny, Co. Donegal

Respondent(s): Mr Terry MacNamara, IBEC, 3rd Floor, Pier One, Quay Street,
Donegal Town, Co Donegal

The determination of the Tribunal was as follows:-

Preliminary Issue:

The Tribunal was informed by the respondent's representative at the commencement of the hearing that the claimant had signed a disclaimer document in which he accepted payments in full and final settlement of all rights, claims and entitlements that he had, or may have had arising as a result of his employment, or the cessation of his employment with the respondent. The Claimant conceded that he had signed such a form but argued that it did not preclude him from making a claim under the Unfair Dismissals Acts 1977 to 2007.

Respondents Case:

Ms EM gave evidence that a cost saving decision was made by the respondent in November 2009 to make staff redundant in nine stores. She sent the claimant a letter on the 4th January 2010, inviting him to attend a meeting on the 7th January to discuss issues that would have an impact on his continued employment.

On the 11th January, she wrote to the claimant outlining the downturn in the business and the decision to make staff redundant. EM explained to the claimant his position was being considered for redundancy on a last in first out basis (LIFO). She invited the claimant to another meeting on the 15th January to discuss the reasons he considered he should be retained by the respondent. At the meeting on the 15th January, EM said the claimant did not raise any issues or concerns.

This was followed up with a third meeting with the claimant on the 21st January, where she issued the claimant with an RP50 and a copy of a compromise agreement. The claimant did not ask any questions in relation to the redundancy and it was agreed he would receive two weeks' notice and finish on the 5th February 2010. She also sent the claimant a letter on the 21st January outlining the above and stating if he had any queries to contact her.

On the 5th February, she held her fourth meeting with the claimant. He completed his RP50 and signed a copy of the compromise agreement. She gave him a cheque for his redundancy and an ex gratia payment. A notice agreement document was opened to the Tribunal which was signed by the claimant and EM on the 5th February 2010. The document stated that the claimant was in receipt of an ex-gratia payment in the amount of €1,101.00 and that the payment was in full and final settlement of all claims.

Under cross-examination EM said she advised the claimant to take independent advice in relation to his redundancy.

She said she did not tell the claimant he would not be paid, if he did not sign the RP50 and the compromise agreement. She said that is not the way she does business.

Claimants Case:

During the 1st week of December 2009, while the claimant was in the shop, a customer came in and told him that he had heard the claimant was going to be made redundant in January. The claimant went into EM's office and repeated what the customer had told him. EM asked him, how could a customer know what was happening in the business.

At the 1st meeting on the 7th January, he was told there had to be cuts and because he was last in, he had to go. During the second meeting, he was given a couple of forms. EM told him to take them away. She told him he would have to sign the compromise agreement for him to receive his cheque.

When she told him the selection for redundancy was (LIFO) based, he accepted it and did not seek legal advice. He was led to believe it was (LIFO) but RC who started after him was not made redundant. He would not have signed the agreement if he had known it was not (LIFO).

Under cross examination the claimant said he had the compromise agreement for two weeks

before he signed it.

Determination on Preliminary issue

The Tribunal accepts that there was a genuine reorganisation within the Respondent Company that necessitated redundancies and that the selection criteria used to decide on the roles to be made redundant were fair.

The claimant is now seeking to claim for Unfair Dismissal based on an unfair selection for redundancy.

The Tribunal heard evidence that the disclaimer document was explained to the claimant. The claimant was then given the opportunity to study the document for two weeks and seek independent advice prior to signing the document. The claimant gave evidence that he did not seek advice and that he freely signed the document. The claimant received an additional ex-gratia payment in addition to his statutory entitlements, which distinguishes this case from any other where no such additional payment was made.

The Tribunal has carefully considered the evidence adduced at the hearing and finds based on the preliminary objection 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 2007, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)