

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE
- *claimant*

CASE NO.

UD1020/2011
MN1144/2011

against
EMPLOYER
- *respondent*

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mrs. M. Quinlan
Members: Mr. J. Reid
Mr G. Whyte

heard this claim at Dublin on 10th October 2012
and 3rd December 2012

Representation:

Claimant(s) : Ms Cathy Mc Grady BL instructed by Carmody Moran, Solicitors, 8 The Avenue, Tyrrelstown Town Centre, Dublin 15

Respondent(s) : Malone & Potter, Solicitors, 7 Cope Street, Dublin 2

The claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 was withdrawn by the claimant's representative at the commencement of the hearing.

Respondent's Case

The respondent company provides a landscape service in grounds and maintenance, development works and sports ground construction. The company director known as (LL) gave evidence that the company employed approximately 20 employees and the claimant was employed in middle management as a landscape manager. He was one of two landscape managers employed and was generally office based. The Tribunal heard evidence that turnover in the company reduced from €2.5 million in 2008 to €1.3 million by 2011. The company's profitability and cashflow were becoming a serious problem. All employees were

aware of this downturn which forced the company to introduce cost savings measures. As part of this process both landscape managers were placed on a 3 day week in or around December 2009/January 2010. The company reduced its outside workforce but was also forced to reduce numbers within its office/administration staff as it became clear that the number of administrative staff was disproportionate to outside employees. Over time it became clear that both landscape managers roles were becoming surplus to requirement and the company made the decision to make both landscape managers positions redundant. The claimant was informed of this at a meeting on 5 November 2010 and informed in writing on 8 November 2010. The work of both landscape managers was subsumed by other employees. The Tribunal heard further evidence that the company has a disciplinary and grievance procedure document in place and the claimant did not raise any grievance through this procedure. The claimant's employment terminated on 16 December 2010.

The witness gave further evidence that at a meeting on 25 December 2010 a decision was made to seek the services of a business development manager in an attempt to invigorate and increase sales. The company publicly advertised for this position on 4 January 2011 and the position was filled by (AO'R) in March 2011 after two rounds of interviews. The interview process included the submission of business plans and the post to which (AO'R) was appointed was a senior role carrying a salary of €50,000.00 per annum plus a sales bonus. The position is not office based and (AO'R) spends the majority of his time out of the office meeting customers. The appointment has had a very positive outcome for the company and has led to increased turnover and profitability. (AO'R) has brought a different methodology and approach to securing work and the company has secured work in Northern Ireland and Scotland since his appointment. The witness accepted that he had no formal discussion with the claimant in relation to his redundancy prior to the decision to make his position redundant. He told the Tribunal that he would have had informal discussions and as the claimant was on a 3 day week and the alarm bells were there.

The witness accepted that on the morning of 5 November 2010 the company secured all confidential information and the claimant was locked out of his computer but he had other work to carry out. He could not recall for the Tribunal if he informed the claimant at the meeting on 5 November 2010 that he had the right to appeal the decision to make him redundant. At the time the decision was taken to make the claimant's position redundant no decision had been made to instigate a role of business development manager. That decision was made on 25 December 2010.

(AO'R) gave evidence that he commenced working for the respondent in March 2011 following attending a successful interview process. He had previously worked for a major landscaping company in Ireland and had also worked in Australia and Canada. He is employed as a business development manager and his role is sales driven. He is provided with a company car and spends 80% of his working time on the road meeting customers. He has been responsible for the company expanding to Northern Ireland and the U.K and gave evidence that there has been a substantial increase in company turnover since his appointment.

Claimant's Case

The claimant gave direct evidence that he commenced working with the respondent company in 2007. He outlined details of his educational qualifications to the Tribunal and gave evidence of his previous history of employment prior to joining the respondent company. During his tenure

of employment with the respondent company his role progressed from a sales, marketing and estimating capacity to also being responsible for maintenance contracts. He also started to develop the domestic aspect of the business towards the end of the first year of his employment. He engaged the services of an outside consultant and together with him they devised a strategic sales and marketing plan for the company which was opened to the Tribunal. He also made contact and built up a relationship with a UK company which resulted in the respondent company securing four jobs of work. He also engaged the services of an internationally acclaimed garden designer to promote the respondent company at trade fairs which bore fruit and brought in business for the respondent company.

He accepted that turnover in the company was declining in 2009/ 2010 and on 11 January 2010 he was placed on a 3 day week. He gave further evidence that he continued on working on that basis until 8 November 2010 when he discovered that he did not have access to his computer files. He called to (LL's) office to see if there was a computer problem and told (LL) that he could not access his files. He told the Tribunal that (LL) chuckled and told him that he (LL) had access to the files but he (the witness) did not. He found this to be a humiliating experience. He was subsequently called to a meeting before lunch by (LL) along with another landscape manager and both were told that they were being made redundant. He gave evidence that no alternatives such as reduced pay or job sharing were offered to him by the respondent. He accepted that he was being made redundant on legitimate grounds and did not utilise the company's grievance process. He was not invited to utilise the grievance procedure. He gave evidence that he had longer service than another employee known as (D).

His employment terminated by reason of redundancy on 16 December 2010 and in early January 2011 he became aware of an advertisement by the respondent company seeking to fill the position of Business Development Manager. He had already written a business plan for the company and believed that job advertisement looked like his job. He did not apply for this position as he believed that he had been pushed out by the respondent company and was not going to go through the humiliation of applying for a position that he was not wanted for by the company. The advertisement contained a salary range of €35,000 - €45,000 and he had earned €38,000 per annum. He accepted that he was predominantly office based during his time working for the respondent company. He estimated that he spent approximately 20% of his time away from the office. He was provided with a reference by the respondent and the Tribunal heard evidence in relation to his efforts to secure alternative employment since the termination of his employment.

The next witness known as (FD) gave evidence that he was responsible for preparing accounts for audit for the respondent company. He worked for the respondent two days per week. His employment terminated in July 2011. He told the Tribunal that he worked with both the claimant and (AO'R) and he believed that there was no difference whatsoever in their roles. (DO'R) also gave evidence that he worked as a contracts manager with the respondent company for 22 years. He worked with the claimant and with (AO'R) and believed their roles to be exactly the same with a different job title.

Determination

The Tribunal carefully considered the evidence adduced by both parties. Based on the evidence adduced the Tribunal finds that the procedures adopted by the respondent company were unfair

with regard to the manner of the claimant's dismissal. The Tribunal finds that the redundancy of the claimant by the respondent was an unfair dismissal within the meaning of the Unfair Dismissals Acts and awards him compensation in the sum of €22,500.00. The Tribunal confirms that this award is inclusive of the redundancy payment of €5,429.00 made to the claimant on the termination of his employment.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)