

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

EMPLOYEE - claimant

CASE NO.

UD1600/2010

Against

EMPLOYER - respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms D. Donovan BL

Members: Mr. L. Tobin
Mr J. Jordan

heard this claim at Dublin on 17th April, 18th April and 19th April 2012.

Representation:

Claimant: Mr. Vernon Hegarty, Membership & Support Centre, SIPTU, Liberty Hall,
Dublin 1

Respondent: Mr. Padraig Lyons BL, instructed by McDowell Purcell, Solicitors, The Capel
Building, Mary's Abbey, Dublin 7

The determination of the Tribunal was as follows:-

Respondent's Case:

The respondent is a voluntary charitable organisation giving support to those living with depression. It was established in 1985. It runs support group services, has a local helpline and gives talks to schools. It is 80% funded by private donations. By 2009 it had twenty-two staff, six of whom were full-time regional executive officers (REOs) and one part-time REO. These REOs carried out multiple tasks.

In early 2009 the Board approved a Strategic Review Process, (RADAR) and all staff were aware of this. Following the CEO's resignation in 2009, the Chairman stepped in for a few months and then DL was engaged in the role of Acting CEO in around August/September 2009. He had previously been a voluntary Board member.

Following on the RADAR review DL was asked to devise a Strategy and Organisational Resources Plan. He looked at the services provided, the website, the helpline, beat the blues talks, support groups and fundraising. He saw the website as a core part of the

organisation; he looked at the cost of developing the website and also at the helpline which was manned by volunteers with one manager overseeing this. Support groups such as REOs were costing the organisation €500,000.00. DL had spoken to each REO who said that their roles were exceptionally busy. He asked for their input to the Plan. One of their tasks was to give talks to schools. DL contended that out of 720 schools only 55 were being targeted for such talks. This was neither efficient nor effective. This service has now been contracted out.

The objective of the review was to deliver a better service for less money. It was recommended that the REOs would no longer deliver localised talks or be involved in fundraising.

This Plan was presented to the Board on 15th December 2009; proposals were put forward and were endorsed in principle and the restructuring of the organisation was approved. It was agreed that the role of Regional Executive Officer no longer met the needs of the organisation and the organisation's future strategic direction.

A meeting took place on 26th January 2010 with all the REOs and each employee was presented with a copy of the Strategy. As part of the planned restructure the six REO positions and the one part-time REO position would be made redundant. However, three new Support Group Co-ordinator (SGC) positions were being created and REOs could apply for these posts. All seven REOs had the skills to carry out the new role. By and large they would work from home. No location had been identified at this time. REOs worked a 35 hr week, total man hours amounted to 234 hrs. The new Support Group Co-ordinator would work a 35 hr. week total man hours amounted to 105 and 84 hours would be spent on Beat the Blues programme. There was a difference of 45 hrs. Also the helpline manager had left the organisation and that position needed to be filled. In addition, REOs could alternatively apply for a position on the Beat the Blues programme on a contract basis. Those who did not wish to apply for the new role could apply for voluntary redundancy. The deadline for receipt of such applications was 5th February 2010.

The organisation engaged a HR consultant (DMcK). His role was to meet all staff affected by this decision.

DL and DMcK were available to meet staff that afternoon. 1 REO met DL and one to two spoke to DMcK.

An Employee Support Service would be provided for those employees affected by the redundancy if requested and DL informed all staff accordingly by email on 27th January 2010. DL offered to make himself available to discuss the new role of Support Group Co-ordinator or a role as contractor to deliver the Beat the Blues programme. Following that invitation DL was both shocked and surprised that no REO contacted him.

Again on 4th February DL emailed the REOs to remind them of the deadline for applications and the invitation to meet him on an individual basis. As he had no response to this email he again emailed the REOs on 17th February 2010 requesting that two employee representatives be nominated to engage with him and DMcK in relation to the overall process and plans. MO and FG were appointed employee representatives and together with their union representative agreed to meet with DL and DMcK.

DMcK subsequently wrote to the two representatives indicating that it was not the Board's

intention to consult with trade unions during this consultation period. A note on potential redundancies and consultation with employee representatives was emailed to the representatives. As the respondent was engaging in collective redundancies, a thirty-day time limit had to be given before notice of dismissal. It was planned to give notice of the redundancies during March. The REOs were asked for suggestions and feedback on the possibility of reducing the proposed redundancies, the possibility of an alternative to redundancies and identifying what supports could be put in place to support the team during the transition.

The initial consultation took place on 2nd March 2010. Employee Representatives were asked to inform REOs that the 3 Support Group Coordinator positions were still available if they were interested in applying for them, that the roles would be open to other staff if they were not filled within the REO staff and that the voluntary redundancy option was still available to them.

On 4th March FG outlined that because there was a difference of 45 hours between the hours worked by the REOs and the proposed hours of the new role of Support Group Coordinator they were willing to negotiate on the difference.

On 9th March 2010 the two representatives wrote to DL indicating that they did not accept the contention that the current situation warranted any dismissals, the contention that the positions were not proper to current staff or the proposal to outsource parts of their current work remit. It was proposed that the matter be referred to the LRC.

As the consultation process was already underway the Board rejected the proposal to meet with the LRC. While there was a discussion around working hours only, DL contended that this was not a proposal.

On 19th March 2010 the representatives sought a meeting with their union representative present. This request was not acceded to.

By letter dated 29th March 2010 DL informed the REOs of the respondent's intention to proceed with compulsory redundancies and requested a meeting with the REOs individually on Wednesday, 31st March 2010. No further proposals had been furnished by the REOs. It appeared that the employees wanted the respondent to revert with other proposals.

The REOs felt intimidated by the process and sought an agenda to the meeting scheduled for 31st March 2010. The REOs did not attend that meeting. RL did not agree that such intimidation occurred. He tried to engage with the REOs. He did not consider alternatives as no REO turned up for the meeting. DL had no further involvement in the process.

DL contended that the website has radically changed and the Beat the Blues programme is working fine. Three to four contractors now work on this programme. There is now an online support service. In 2011, 289 schools were reached through the Beat the Blues programme. One REO took up the position of Support Group Co-ordinator following her return from maternity leave. The two remaining Support Group Co-ordinator positions were advertised in June 2010.

Following a letter to the Board from the two representatives dated 6th April 2010 in which they outlined their unhappiness to attend individual meetings for fear of intimidation, DC, Chairman acknowledged that letter and invited the REOs to an individual meeting. FG subsequently

sought an agenda. Tuesday 13th April 2010 was scheduled for the meeting. The REOs were dissatisfied with that meeting and felt the process was at an end.

D.McK is a Managing Director of a Human Resources Management company. He had done some work for the respondent on occasion. As the respondent had no HR department, D.McK was engaged by the respondent to assist with the communication of the planned changes to the REOs and attended the meeting on 26th January 2010 with DL. It had been agreed that supports would be put in place for the employees. He facilitated a questions and answers session. No questions were posed by the employees. After that meeting four REOs spoke to him individually on a one to one basis with concerns about the terms of the process and their entitlements.

The new roles of Support Group Co-ordinator had no decrease in salary. Upon application for these three new roles D.McK was confident that three REOs would get the positions.

Claimant's Case:

The claimant commenced work on 2nd July 2007 as a Regional Executive Officer and reported to FG. He worked in the south east region of the country. His role entailed recruiting and training volunteers, giving talks to organisations and to schools. He was passionate about his work.

Regional monthly meetings were held in head office in Dublin.

On 26th January 2010 he was invited to a meeting with his REO colleagues. No agenda had been forwarded in advance of that meeting and the claimant understood this to be one of their normal meetings. He was handed documents, one being the respondent's strategic review announcement and another being a new job description for Support Group Co-ordinator. When he read them his understanding was that his position together with his colleagues' positions were being made redundant.

The claimant was shocked. He contended that both the job he was doing and the new job were the same with a few tweaks and nothing more than that. Only a few months earlier the Chairman commended him and the volunteers on their work.

At that meeting DL informed the staff that the organisation was restructuring. No alternative to redundancy was presented to any REO staff member. It appeared to the claimant that this was not a restructuring of the organisation.

His understanding was that the three new positions would be open to all staff in the organisation. The role entailed working a 35 hr week. Each REO had worked approximately 12 hours a week on the Beat the Blues programme. He denied that the sessions only lasted four hours. No guarantee was given to the REOs that they would get the new positions or where the new posts would be located.

The claimant and his fellow REO colleagues had no support. They talked among themselves. While D.McK was there to support them the claimant contended that he did not know him. After that meeting they consulted with one another and tried to support each other. All REOs were devastated by the announcement of their redundancies.

The deadline for the application for the new positions was 5th February 2010. The REOs were trying to decide where they were going. They contacted their trade union representative, GF and tried to get representation with the respondent. The respondent was not open to meeting GF. The respondent was not involved in collective bargaining.

DL asked the REOs to appoint two employee representatives. Both the claimant and FG agreed to this. The advice from GF was to bring their concerns to the LRC. The respondent refused to go to the LRC.

On 2nd March 2010 the claimant and FG met DL and D.McK. They outlined their position. They had a proposal which was based around their working hours. The claimant contended that there was a difference of only 45 hours between the old jobs and the new jobs. All other aspects of the job were similar. They proposed that the REOs be employed full time on the Beatthe Blues programme. While DL listened to them he said in an agitated manner that “these are good jobs being offered here if you don’t want them I have people queuing up for them”. The claimant saw no reason to apply for his own job.

No effort was made by the respondent to negotiate. They were still open to resolving the situation. GF assisted them in drafting a letter to the respondent in which they said that they did not accept the respondent’s contention that the current situation warrants any dismissals, they did not accept the contention that the positions which were advertised were not proper to current staff nor did they accept the proposal to outsource part of their current work remit. (Beat the Blues Programme). The claimant contended that redundancy was used as a cloak to get rid of staff.

The claimant and his colleagues did not want to meet DL on a one to one basis for fear of intimidation. They wanted their union representative to attend meetings with them.

They attended a meeting with DC and DMcK on 13th April 2010. They were informed that they would be issued with notice of their redundancies. The claimant contended that this was a fait accompli. It was alluded to that they had not put forward any proposals. The meeting came to a natural conclusion. They were left out to dry.

The claimant was never offered the job of Support Group Co-ordinator.

The claimant’s employment was terminated on 14th May 2010. He secured a new job on 23rd August 2010.

Majority Decision:

The Tribunal determines by a majority decision, with Mr. Jordan dissenting, that the termination of the claimant’s employment was not an unfair dismissal and accordingly his claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Dissenting Opinion:

The following is Mr. Jordan's dissenting opinion:

1. I find that the three new Regional Co-ordinator Posts created by the respondent in 2010 were simply the renaming of the existing Regional Executive Officer posts and, therefore, should have been allocated to three of the existing regional executive officers. In the absence of any agreed method on the allocation of these posts amongst the existing seven post-holders then, in my opinion, that allocation should have been effected on the basis of LIFO.
2. The respondent engaged the services of an outside HR specialist to advise them on how the redundancies should be handled notwithstanding that the acting CEO was an expert in this area. At the same time the respondent refused to allow the claimants to use their trade union official to accompany them at meetings concerning their future employment with the respondent. This, in my view, placed the claimants at a disadvantage and was, therefore, unreasonable and unfair.
3. The respondent also refused the request of the claimants to utilise the services of the Labour Relations Commission. I believe that this said refusal again placed the claimants at a disadvantage and was, therefore, unreasonable and unfair.
4. I find that the lack of consultation with the claimants prior to their being told that their posts were being made redundant was a flaw in the process and in my opinion could have led the claimants to believe that any further attempt by the respondent to engage in a consultation process was simply in order to implement the decision that had already been made.

Accordingly, I believe that the claimant was unfairly dismissed.

Determination:

The following is the majority decision of the Tribunal:

The Tribunal considered the evidence adduced at the hearing and finds that a redundancy situation arose due to restructuring and that the respondent acted reasonably and fairly towards the claimant in addressing that situation. The Tribunal accepts that the said restructuring was carried out in order to more effectively achieve the aims of the respondent and to get the best value from the funds raised by the respondent.

The Tribunal accepts that there was some misunderstanding when the alternative positions were first notified to the claimant but finds that this was remedied as soon as the respondent became

aware of the misunderstanding and well in advance of any termination date.

The Tribunal finds that there was a failure by the respondent to consult or engage with the claimant prior to announcing a restructuring of the company but the Tribunal finds that this failure was effectively cured by the fact that the claimant remained in employment some three months after the notification of the restructuring and before the restructuring was implemented thus giving the claimant a reasonable opportunity and time to consider the matter and engage with the respondent.

The Tribunal finds that the claimant in law had no right to be accompanied by his Union representative to the meetings. However, the Tribunal is of the view that if union representation is requested it is preferable that this request is acceded to if possible.

The Tribunal finds that the three positions as advertised were in effect the positions that had been carried out by the seven Regional Executive Officers ("REOs"). However, the respondent's restructuring required a need for three as opposed to seven. There was a further new managerial post and some contract work. All of the Regional Executive Officers, including the claimant, were given the opportunity to apply for these new positions and if he did not wish to apply he had the option of statutory redundancy. The Tribunal is absolutely satisfied that the respondent intended that some of the REOs would take up the alternative positions but none of them took up the opportunity.

The Tribunal whilst acknowledging that the claimant and his colleagues were a committed, dedicated and very credible group of people nonetheless found that they became entrenched and the Tribunal is satisfied that the only alternative that would have been accepted by them was the retention by the respondent of the entire seven REOs albeit that they were prepared to offer some compromise regarding hours worked. The Tribunal is satisfied that this would have been the claimant's position had LIFO been offered as a means of selection for redundancy.

The Tribunal would like to note that it does not believe the claimant and his colleagues meant to be offensive when the word "cloak" was used in their Form T1A submitted to the Tribunal but rather they used the word to convey their beliefs regarding the redundancies.

In the circumstances the Tribunal, by majority, finds that the claimant was dismissed by reason redundancy and that the procedures used by the respondent were fair and reasonable. Accordingly, the claim under the *Unfair Dismissals Acts 1977-2007* fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)