

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYEE - *appellant*

UD1339/2011

against the recommendation of the Rights Commissioner in the case of:

EMPLOYEE -*appellant*

and

EMPLOYER - *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath B.L.

Members: Mr D. Moore
Mr M. O'Reilly

heard this appeal at Dublin on 27th November 2012

Representation:

Appellant(s): The appellant in person

Respondent(s): The director of the respondent

The determination of the Tribunal was as follows:-

This case came before the Employment Appeals Tribunal by way of an employee appealing the recommendation of a Rights Commissioner reference number r-098092-ud-10/SR.

Respondent's Case

The director of the respondent told the Tribunal the company was established in 1996 with TM. It embroidered garments. Business was good and in 2008 it had ten employees. In 2009 the respondent experienced a significant drop in business. Six employees were placed on short time. Employees had no work the week of the 27th November 2009. On the 11th January 2010 the appellant had paperwork sorted and he claimed redundancy. He presumed that the appellant thought that he would get work again with the respondent in March 2010 after taking

his redundancy. No one has been re-employed in place of the appellant and he has used a part time person who comes in when there is work for him.

Appellant's Case

The appellant told the Tribunal that he commenced employment with the respondent in 1998 as an embroidery machine operator. On the first week of January 2009 he was on a four day week. Staff had no work the week of the 27th November 2009. He was informed that when work picked up that his employer would contact him and he believed that work had picked up. In January 2010 he was informed that there was no work for him. On the 11th January 2010 he sought his redundancy which he received. He believed that he would be in work again in March 2010. No one has been re-employed since he was made redundant apart from a part time person who works when the respondent has work to give him. After he was made redundant the respondent advertised on the web for a person to work in the office.

He obtained part time employment on 22nd November 2012 and he had no other employment since he was made redundant. He was in receipt of disability benefit for six months and he was also in receipt of unemployment benefit.

Determination

This matter comes before the Tribunal way of an appeal from the Rights Commissioner dated the 10th of May 2011. The appellant believes he was treated unfairly when, towards the end of 2009 he was put on temporary lay-off. This followed on from a protracted period of short time which had existed for all employees in the workplace throughout 2009. Employees were all on a three or four day week.

The appellant remained on lay off for a six week period from the end of November 2009 to the beginning of January 2010. It is common case that the appellant sought to be made redundant and as was his entitlement on being laid off for a protracted period of time.

The appellant is adamant that he had to look for his redundancy at this time as the employer had absolutely failed to keep the claimant informed of any potential change in the workplace with the promise of work such that would allow him return to the workplace. The appellant is unhappy that this lack of information meant that the claimant who had eleven years' service had to forego his significant notice entitlement as well as being entitled to only statutory redundancy. At the end of eleven years employment the appellant is aggrieved that so little value is placed on his years of hard work and service to the employer.

The respondent has indicated that there has been a global downturn in the stitching and embroidery industry since 2008. Much of the work has been outsourced and the corporate market is not as buoyant as it once was.

The appellant accepts that there was a downturn in the industry in the matter described but felt that the respondent should have made him redundant with his notice entitlements when it was quite clear that his services and expertise was not required and unlikely to be retained.

The Tribunal has every sympathy for the appellant however, the legislation operates in such a way so that employers cannot leave employees dangling indefinitely with the vague promises of work. The system operates so as to allow employees take matters into their own hands and

consider themselves redundant thereby giving certainty to themselves.

The appellant availed of this facility and was in due course paid his statutory entitlement.

On balance the Tribunal cannot find that this was an unfair dismissal and must affirm the decision of the Rights Commissioner and the appeal fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)