

**EMPLOYMENT APPEALS TRIBUNAL**

APPEAL(S) OF:

CASE NO.

EMPLOYEE *appellant*

UD1340/2011

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

EMPLOYEE *appellant*

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

The determination of the Tribunal was as follows:-

This case came before the Tribunal by way of an employee appealing the recommendation of the Rights Commissioner reference no. r-098171-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 11<sup>th</sup> 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 August 1997. On the first week of January 2009 he was on a four day week. When he returned to work in January 2010 he was told that there was no work for him. He had spent a year trying to talk to the director about the situation and most of the meetings were instigated by staff. He sought his redundancy as if he were to look for a job after the 11th January 2010 he would lose his redundancy entitlement.

After his redundancy the respondent advertised for a person to work in the office. He felt the respondent could have contacted him and his colleague about this as they knew the work better than anyone else and this opportunity was not afforded to him. He could have done this job apart from the invoicing. The director said at one stage that the respondent would not last a year and four weeks later he placed an advertisement on the web for a person to work in the office. He knew the person who got the job.

The appellant placed an advertisement on the website on 11<sup>th</sup> February 2010 seeking employment in the embroidery area. He left the respondent on very good terms. Employees endeavoured to look for work and management did not go out to seek work.

In cross examination he stated that the 26th November 2009 was his last day in work. He had been on a four day week since early 2009 and initially he was not in receipt of unemployment benefit. He and his colleague were the only two who remained in November 2009. The director told him that there was no work for him. He endeavoured to get his employer to search out extra work. T was the other manager and the employer did not look for more work.

By January 2010 he was told that there was no more work. T had taken over the running of the embroidery section at that time. Four to six weeks later a job was advertised for the office.

Then he discovered that D was getting work and he had undertaken work in the evenings with him. He received €15,000 in a redundancy package. He had meetings with employees in an endeavour to obtain work. He succeeded in getting work in the city centre. He now works in a Dublin University on a much lesser salary and he stated that the potential for the respondent is enormous.

## **Determination**

This matter comes before the Tribunal way of an appeal from the Rights Commissioner dated the 10<sup>th</sup> 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 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 appellant 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 appellant who had twelve years' service had to forego his significant notice entitlement as well as being entitled to only

statutory redundancy. At the end of twelve 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 manner 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)