

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

EMPLOYEE *-claimant*

CASE NO.

UD1791/2010

against

EMPLOYER *-respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms D. Donovan B.L.

Members: Mr J. Browne
Ms S. Kelly

heard this claim at Wexford on 16th February 2012, 11th May 2012 and 3rd September 2012

Representation:

Claimant: Mr. Anthony H Ensor, Ensor O'Connor, Solicitors,
4 Court Street, Enniscorthy, Co Wexford

Respondent: Mr. John Curran B.L. instructed by Kirwan & Kirwan, Solicitors,
4 Cornmarket, Wexford

The determination of the Tribunal was as follows:

Dismissal as a fact was not in dispute between the parties. The claim before the Tribunal related to the selection of the claimant's position for redundancy and to the procedures utilised by the respondent in effecting the redundancy.

Respondent's case:

The Tribunal was informed at the outset of the hearing that the person who held the position of CEO at the time of the events is since deceased.

The Chairman gave evidence that the respondent came into being by order of the Minister. Three organisations were amalgamated in late 2008 to become the respondent which promotes social inclusion through various programmes.

The Chairman was previously Vice-Chairman of WD which was one of the three organisations

that had amalgamated. The witness was elected Chairman of the respondent and strove to bring leadership to the new entity. The three people in charge of the three amalgamating organisations were the claimant, JN and BB, with the claimant having been in a position in WD.

In January/February 2009 a competition was held by the respondent and BB was appointed to the position of CEO with the respondent. The claimant and his colleague JN each held the position of integrated service manager of which there were just two posts.

Between January and May 2009 the respondent was forced to implement redundancies as the funding it received was not sufficient to pay all of the staff. A 10% cut in funding resulted in ten redundancies. However, by 2010 the respondent suffered a further cut in funding. A proposal was made at Board level that the respondent would engage a team of auditors to conduct an independent review. The Chairman believed that the CEO would have met with the claimant and JN to inform them that such a review was being undertaken

As a result of this proposal a report was produced. The report was opened to the Tribunal. Its key recommendation was that the two positions of integrated service manager be abolished. The respondent would save €224,000 within one year with the abolition of these posts. Over a four year period it would create a saving of nearly one million euros. The report also suggested the creation of four area manager positions but these posts never came into being due to funding constraints. The report was put before the Board on 3rd March 2010 and an executive sub-committee was set up to deal with the report.

The Chairman understood that on 4th March 2010 the CEO met with the claimant and JN to brief them on the report prior to meeting with the union. Later that day a PowerPoint presentation of the report was shown to staff and the Chairman believed the claimant was present at this meeting.

A further meeting was held on 9th March 2010 between the CEO, the claimant and JN. The Chairman understood that both the claimant and his colleague expressed an interest in the proposed area manager positions. The CEO, however, could not at that time have offered the positions to either of them as it was not known at that time if the positions would come into being. Ultimately, the respondent could not afford to implement these positions and instead appointed team leaders without incurring further costs. The respondent required the extra saving to stay solvent.

Following from a decision taken at a committee meeting on 18th March 2010 the CEO informed the claimant and JN that their positions were redundant and that the area manager positions would not exist. A letter dated 22nd March 2010 subsequently confirmed this in writing.

The claimant's final day of work was 14th May 2010. Four other staff members were also made redundant in or around that time. The report had stated that the respondent had a level of senior management that it could not afford to sustain. The respondent had been requested not to reduce the numbers of frontline staff. The claimant worked in the RDP section and at the time there were seven employees, now there are four. Project numbers have doubled with only two project officers in situ.

During cross-examination it was put to the Chairman that he had received a telephone call from the claimant in early March 2010. The Chairman stated that during the telephone call the claimant had said that he would be available for one of the area manager positions. The

Chairman stated that having held the position of Vice Chair of WD and having worked with the claimant he was at pains to be just and impartial. Subsequently on 23rd March 2010 it was decided not to proceed with implementing the area manager positions.

It was put to the witness that the claimant did not have any communication with the firm carrying out the review. The Chairman found this difficult to believe as some figures in the report were elicited from the department which the claimant managed.

It was put to the Chairman that the claimant's colleague (S) who worked in the same programme as the claimant had sought voluntary redundancy but that this request was refused. The Chairman replied that the request was refused as S was a frontline project manager and was required by the respondent.

It was put that there was no cut in funding to the programme which the claimant managed and that it had funding up to 2015.

In response to questions from the Tribunal, the Chairman stated that the independent firm who produced the report were given an "open door" policy and all the staff were available to meet with them but their contact on the ground was the CEO.

BK gave evidence in relation to the funding of the RDP programme. A document prepared for the hearing was opened to the Tribunal. The 2010 budget was given on a monthly basis and the difference in allocation between 2009 and 2010 was almost €75,000. A staffing document was also presented to the Tribunal. The witness stated that a spend of €415,000 on staffing was not sustainable. The respondent now has more projects in place but with lesser staff.

During cross-examination the witness confirmed that the overall value of the RDP programme for 2009 to 2015 was intact but stated that there was the possibility that the exchequer contribution might be reduced.

In reply to questions from the Tribunal, the witness confirmed that money saved on one programme could not be transferred to another programme. Any monies unspent are carried forward.

Claimant's Case:

The claimant gave evidence. He was employed from January 2009 on a yearly salary of € 94,550.00.

In January/February 2009 a competition was held by the respondent and BB was appointed to the position of CEO with the respondent. The claimant and his colleague JN each held the position of integrated service manager of which there were just two posts. Between January and May 2009 the respondent was forced to implement redundancies as the funding it received was not sufficient to pay all of the staff. A 10% cut in funding resulted in ten redundancies.

The claimant told the Tribunal that he was a qualified Accountant. On 25th February 2010 he was called to a meeting with the CEO where he was informed a report was being put to the Board regarding savings in costs. He was given a copy of the report from JN. He received a call from a Board member informing him that his post was to be made redundant.

On 4th March 2010 he was called to a meeting with the CEO. He and JN were informed their positions were being made redundant. All staff attended a Powerpoint presentation. A further meeting was held on 9th March 2010 with JN and the CEO. He expressed an interest in the proposed area manager positions. He was told no assurances could be given regarding the new positions.

On 18th March 2010 the CEO informed the claimant and JN that their positions were redundant and that the area manager positions would not exist. A letter dated 22nd March 2010 subsequently confirmed this in writing. The claimant said he was shocked.

The claimant was made redundant on 14th May 2010.

In cross-examination the claimant stated that no cuts had been made in the funds that his salary was paid from.

Continuing to be cross-examined on the final date of hearing, the claimant stated that he was unaware of the report until the day before it was submitted to the Board. While the claimant accepted there were cutbacks in funding for other programmes he stated that there was no cutback in the programme out of which he was paid and funds could not be transferred between different programmes. He accepted that some restructuring may have been necessary. The claimant stated that had a 10% pay cut been implemented there would have been no need for redundancies.

The claimant confirmed that he telephoned the Chairman for an assurance that he could apply for the area manager position and he relied on the assurance given to him on 3rd March 2010.

It was put to the claimant that the respondent had to protect frontline services. The claimant replied that his position was frontline and he also stated that he could have carried out the work of his colleague (S) who had sought voluntary redundancy. The claimant also stated that alternatives such as working for a reduced rate or redeployment could have been offered but were not.

The claimant gave evidence of loss. The claimant was cross-examined on his loss.

In reply to questions from the Tribunal the claimant stated that a last in first out selection process should have applied in accordance with his contract with WD. In that case his colleague (S) who sought voluntary redundancy would have been selected. He further stated that everyone in the RDP section commenced employment after he did.

Determination:

Having considered the evidence adduced at the hearing the Tribunal accepts that there was a genuine redundancy due to a reorganisation and rationalisation of the respondent. The claimant appears to have accepted a redundancy situation regarding his role when he expressed his interest in a proposed alternative role and offered to take another position both with a significant salary reduction. The claimant is to be commended for this approach.

The Tribunal is of the opinion that at a minimum an employer when effecting redundancies should act reasonably but in particular should :-

1. Engage with employees, provide information at an early opportunity and afford them reasonable time to consider the proposed redundancies:
2. Explore all alternatives to redundancies:
3. Consider redeployment to any alternative positions that might be available within the organisation.
4. A right to apply for and be considered for any new roles being created should be allowed:
5. Consider offering a right to appeal the redundancy decision:
6. Consider any proposals put forward by the employee concerned:

The Tribunal finds that the respondent did not adequately or as timely as it might have consult with the claimant taking into account the claimant's senior role and length of service with the respondent.

The Tribunal finds that the respondent did not adequately or at all consider alternative employment or redeployment within the organisation despite the claimant making it clear from the outset that he was ready and willing to consider alternatives and had in fact put alternatives forward.

The Tribunal finds that there was prevarication on the part of the respondent as to whether it would consider the claimant for one of the two new roles it had proposed to create.

The Tribunal finds that any engagement the respondent had with the claimant was not real and meaningful and in those circumstances the Tribunal determines that the respondent did not act fairly or reasonably regarding the redundancy of the claimant. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007, succeeds and the Tribunal awards the claimant compensation in the amount of €35,000 exclusive of the statutory redundancy payment made to the claimant on termination of his employment.

The Tribunal did not find it necessary to consider the issue as to whether the pool for selection for redundancy consisted only of the claimant and JN or otherwise.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)