

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYER

UD311/2011

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

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. Hurley
Members: Mr. G. Andrews
Ms. S. Kelly

heard this appeal at Limerick on 16th October 2012 and 7th January 2013

Representation:

Appellant:

Peninsula Business Services (Ireland) Limited,
Unit 3, Ground Floor, Block S, East Point Business Park, Dublin 3

Respondent:

Mr. Gerard Kennedy, SIPTU, 4 Church Street, St John's Square, Limerick

Appellant's case

The appellant is a freight company and had two separate divisions. One division delivered new furniture to households on behalf of furniture retailers and the other division was involved in furniture removals for customers moving house.

The respondent was employed solely in the furniture delivery division from the time he commenced employment in May 2004 until he was made redundant in January 2010. Business went into decline from 2008 and the respondent told all employees that it intended to impose a 10% pay cut across the board. However the employees did not agree to this pay cut and signed a letter to this affect. The respondent and a colleague (FOM), on behalf of the signatories to the letter, met with the appellant to discuss the proposed pay cuts. The appellant did not apply the pay cuts at that point and shortly afterwards decided that as the pay cuts were not accepted that there would have to be redundancies.

Two positions were identified for redundancy and both positions were held by the respondent and FOM. It was decided by the appellant that this work could be distributed among other employees. The respondent was informed of this decision and given the required notice. The respondent was selected for redundancy on the basis that it was his position made redundant

and there was no alternative employment available for his. The appellant chose to keep other employees on the basis of their qualifications and skill sets and did not consider re-training the respondent.

Shortly after the respondent was made redundant a 10 % pay cut was introduced across the board. However this was not enough to prevent the furniture delivery business from closing down some six months later.

Respondent's case

The respondent contested that he was chosen for redundancy on the basis of his trade union activities insofar as he was one of two employees who represented their colleagues in their opposition to a proposed pay cut. The respondent pointed to the fact that it was only he and FOM who were made redundant in January 2009 and that very soon afterwards the pay cuts they opposed on behalf of the employees were introduced.

There was no discussion with the respondent in respect of alternatives to redundancy and the termination of his employment was presented to him as a foregone conclusion.

Determination

The Tribunal carefully considered the evidence adduced at the hearing. The Tribunal is satisfied that a genuine redundancy situation existed at the time the respondent was made redundant. However the Tribunal is not satisfied that the respondent was fairly selected for redundancy.

The respondent joined a trade union and chose to represent his colleagues in their opposition to proposed pay cuts. Very soon after this the appellant chose to make the respondent redundant and within a short time after this the appellant imposed the pay cuts which the respondent and his colleagues opposed. The Tribunal finds that although the section of the appellants business, in which the respondent was employed, closed entirely within six months of his redundancy, the respondent was unfairly selected for redundancy at the time of termination of his employment, on the basis of his trade union activities.

In all the circumstances the Tribunal upholds the decision of the Rights Commissioner UD89632/09/MR and awards the respondent €4,616.00 under the Unfair Dismissals Acts, 1977 to 2007. It should be noted that this award is in addition to any amount already paid to the respondent in respect of a redundancy lump sum.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)