

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE (*claimant*)

CASE NO.
UD1780/2011

Against

EMPLOYER (*respondent*)

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr. T. O'Sullivan
Ms M. Maher

heard this claim at Dublin on 25th January 2013

Representation:

Claimant(s) : Mr James Jones, Jones Solicitors, 3 Lower Mount Street, Dublin 2

Respondent(s) : Mr Warren Parks, Warren Parks, Solicitors, Suite 317, The Capel Building,
Mary's Abbey, Dublin 7

The determination of the Tribunal was as follows:

The respondent operates an employment agency and currently employs approx. 500 staff. The Operations Manager, GD, told the Tribunal that the claimant commenced employment with the respondent on 16th July 2009 as a security officer. On 2nd September 2010 the claimant's pay was reduced from €11 per hour to €10.01 per hour. GD met the claimant in early January, 2011 as the claimant was not happy with the reduced pay. The rate per hour was then increased to €10.50 per hour with the claimant signing a waiver and release document, which was put to him by the respondent company.

The claimant was working on site K at the time the respondent terminated his employment. The termination was due to the fact that one of the company's clients reduced the number of hours required at site K.

Under cross-examination, GD denied that the claimant was dismissed as a result of a claim brought by the claimant against the respondent in the LRC. When asked about the respondent's job advertisements with FAS, GD stated that the company advertise for staff even if they have no jobs on offer. The reason they do this is because they need to have CV's available to them on a regular basis because of short notice jobs. The company would always have a reserve bank of people available.

Under re-examination, the witness stated that the claimant was dismissed using LIFO (last in first out). The advertisements in FAS are usually not for a particular post but for a particular area.

The claimant told the Tribunal that if he had been asked to work another site after his dismissal he would have done so. He signed the waiver document at the time as he felt he had no other choice. The claimant indicated that he was told there would be more hours of work available to him but he was denied above 36 hours per week and he had no idea why he was let go. He had previously been working 60 hours a week with the respondent. After his dismissal he felt there was no point in applying to the respondent for another job, not after the way he was let go. He felt the company would not entertain him.

Under cross-examination, the claimant said he did not re-apply to the respondent for another job as he was let go unfairly and so there was little point. The respondent did not subsequently telephone him. The claimant accepted that the hours on site K were reduced by the company client. He would have considered the option of another job with the respondent had one been offered to him.

The claimant then went on to state that the respondent offered him a position with 39 hours per week after his dismissal and after the Rights Commissioner's hearing. He said he refused the job offer as he wanted to be seen to be treated fairly. The claimant indicated that he wanted to have his complaints heard and proven.

Determination

The evidence given to the Tribunal demonstrated that the Claimant was the employee with the least service of similar employees in the employment. The position he held was one in which the employer could do with fewer employees in accordance with the definition of redundancy in the Redundancy Payments Acts and therefore his position was redundant as the user of the services of the respondent reduced the hours significantly in which he required the respondent to provide the service. The respondent in making the selection of the claimant for redundancy applied the LIFO principal and in the circumstances the claimants dismissal was fair in all the circumstances and was for reasons of redundancy.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)