

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE - *claimant*

CASE NO.
UD2034/2010

against
EMPLOYER - *respondent*
under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms C. Egan B.L.

Members: Mr T. Gill
Ms H. Murphy

heard this claim at Galway on 18th April 2012

Representation:

Claimant(s) : Purdy Fitzgerald, Solicitors, Kiltartan House, Forster Street, Galway

Respondent(s) : Mr. John Brennan, IBEC, West Regional Office, Ross House,
Victoria Place, Galway

The determination of the Tribunal was as follows:-

Respondent's Case:

A Director (MJ) of the company gave evidence. The respondent company was involved in the sale of building supplies to builders, had a public retail area and plumbing area. The claimant was employed as a Sales Representative mainly dealing with builders "on the road" and spending one or two days a week on the premises, as was another Sales Representative (JMD), a colleague of the claimant.

From the Summer of 2007 the business started to decline and due to this turnover decreased by half over a two year period; 2008 – 2010. In 2008 the witness met with the claimant and discussed the matter of the dramatic decline in the demand for building supplies in the last year. A letter dated November 18th 2008 was sent to the claimant detailing that he, the claimant, would be put on a three-day week from December 1st 2008. JMD also received this letter. This three-day week would not affect his service for redundancy or pension. The witness could not specify how long this three-day working week would last.

In 2009 the situation was reviewed but business had got worse. The witness told the Tribunal that the respondent company had a manufacturing plant and all staff had been let go in 2008.

In mid May / June 2010 he met with another Director (BM), the claimant and JMD due to the downturn in sales. It was proposed that the claimant would “come off the road”, work in the shop and spend a third of his time dealing with existing clients by telephone. JMD was to “come off the road” also. The claimant asked why they could not make him redundant. He was informed they could not make him redundant with the enhanced package a former colleague had received. Strong words ensued. The claimant said he would return the following day to discuss the matter privately.

On July 5th 2010 the witness met the claimant to discuss the situation again. The claimant was given three proposals for his consideration:

“1. You would work from the Trade Centre in Ballybane. Your main role would be on the Trade Counter dealing with customers requirements including processing sales transactions and queries. Other duties which might be required from time to time would include ordering products, stock taking, merchandising and other duties which arise in the operation of a retail outlet.

A certain amount of time (probably not more than 30%) would involve dealing with your current customer base via the telephone. In this role you would have the option of working a 35-hour week or remaining on the current three-day week.

2. A vacancy currently exists as Head of the Paint Department. This role involves the purchasing of paint products in conjunction with the General Manager of the Trade Centre i.e. meeting with the Sales Representatives of the supplier companies, agreeing process and quantities, preparing Purchase Orders. It also involves dealing with customers and other retail duties as described by the Trade Centre role including sales transactions processing, merchandising and the general management of the Paint Department. The most recent incumbent in this post worked 35 hours a week. It is proposed that you would spend each week dealing with at least some of the current customer base. Therefore, we are proposing that you work full time (39 hours a week).....

.....Should you decide that you are not willing to accept either of the proposals outlined above then the Company are reluctantly prepared to consider your redundancy. As explained we are only in a position to pay statutory redundancy at this time.....

.....Our discussions on these matters have gone on for a considerable time, which appropriate in the circumstances. We now need to get to a conclusion. Therefore, I would be grateful if you would meet me or (other Director - BM) in my office on Tuesday August 18th at 2.30pm to let me know your decision. If you need any further clarification on anything associated with these matters please call me on (mobile number given).”

A letter containing these contents was sent to the claimant dated August 11th 2010. MJ informed the claimant that the company needed to come to some conclusion and was asked to meet him and BM in his office on August 18th 2010.

At a meeting with the claimant on the afternoon on August 11th 2010 the situation became heated between the claimant and MJ. The claimant was informed that his language constituted gross misconduct. The claimant sought legal advice and his solicitor submitted a letter to the respondent

seeking more time to review his options.

On August 17th 2010 MJ wrote to the claimant stating that, although the option of alternative employment and re-training was available to him, the respondent had come to the conclusion that these options were no longer an option. He was submitted an RP50 form. Another letter was sent to the claimant on August 19th 2010 requesting that if he was still interested in pursuing the options available to him he was to let MJ know by close of business on August 27th 2010. If he did not contact MJ, it was assumed he was not interested in either option and therefore his redundancy would proceed.

On August 30th 2010 the claimant was informed that his employment would terminate on September 3rd 2010 and the company would pay his 8 weeks pay in lieu which would bring his date of termination to October 18th 2010. The claimant was not replaced.

Claimant's Case:

The claimant stated he commenced employment with the respondent in 1975. He outlined his employment history with the respondent. In 2008 he was put on short time. BM contacted him to attend a meeting. Redundancy was not mentioned.

He told the Tribunal that MJ informed him on June 29th 2010 that there was no job for him. He was offered a position in the Trade centre but was not told what type of job it was. He felt there was no job there. He asked several times for the job offer description in writing. When asked, he stated that he had not insulted MJ.

On August 11th 2010 the claimant stated that MJ handed him a letter and wanted an answer. This letter contained the first details of the proposed options open to him. He felt he was "being shafted" and felt unwell. He rejected the offer of the job. He took the redundancy package under protest. He did request an appeal.

On cross-examination he accepted that he had not been replaced.

Determination:

Having carefully considered the sworn evidence and submissions adduced by both parties in this case, the Tribunal finds that a genuine redundancy situation existed and the claimant was fairly selected for it. Accordingly the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)