EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF: CASE NO. UD826/2011

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

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chaithe employeean: Ms. K.T. O'Mahony BL

Members: Mr. J. Browne
Mr. F. Dorgan

heard this appeal in Kilkenny on 14 February 2013

Representation:

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Appellant(s):
Ms. Kathleen Funchion, S.I.P.T.U.,
18 Lower Patrick Street, Kilkenny

Respondent(s):
Mr.Jim Waters on behalf of Kearney Roche & McGuinn, Solicitors,
9 The Parade, Kilkenny

The determination of the Tribunal was as follows:-

This case came to the Tribunal as an employee's appeal under the Unfair Dismissals Acts, 1977 to 2007, against a Rights Commissioner Recommendation r-094923-ud-10-TB.

Hereinafter the appellant will be referred to as the employee and the respondent as the employer.

The employer was the founder of the respondent company which has been in existence since 1987. It manufactures envelopes. The employee was recruited from the Philippines and commenced employment with the employer on 25 September 2002. The respondent's position was that the employee had always worked in maintenance.

The employer's case was that that from October 2008 the business went into decline. From2008 to 2010 orders fell from 18,000 to 11,000 and prices fell by 20%. Income fell by over€800,000 between 2008 and 2009 bringing the company to a loss-making position in 2009. Costs had to be cut because heavy losses were being sustained. In September 2009 salaries werereduced. The employer reviewed all departments, including production where maintenance wasa major cost. The employee was the only one working on maintenance. While he had been agood worker the maintenance function had undergone major changes. The employer had tobring in maintenance technicians from England and Germany to do major repairs on somemachines, which led to downtime in the factory resulting in financial loss.

The employer could make substantial savings by outsourcing maintenance to someone who could take over the claimant's duties as and when needed. In the event he found an independent contractor who works as and when needed as well as doing the major repair work; thus, eliminating the problem of downtime. The level of expertise required for the job had changed drastically and the employee did not have the full range of skills now required. All downtime is now eliminated.

The employer met with the employee three times around end of February/beginning of March. At the meeting he told the employee that he was considering outsourcing maintenance and at a further meeting he told him he was considering making him redundant. This was confirmed by letter 10 March, stating:

> *"The respondent] has been forced to undertake substantial cost-cutting reductions due to the current economic climate and unfortunately we now cannot afford to employ a full-time internal maintenance manager. We will be outsourcing any maintenance work to a third party maintenance company that will carry out the work as and when required."*

The employee was paid his redundancy payment as well other entitlements and a further sum in respect of the costs of travelling home to the Philippines.

The employee's position was that initially he worked as a print operative and later was promoted to the role of maintenance manager. Most machines operated on a 24-hour basis and he was on call 24/7. He multi-tasked and when not doing maintenance he serviced and repaired electrical appliances and equipment as well as being stockman and warehouseman. He had an impeccable record and helped out in emergencies.

He was shocked when he was told, at the meeting on 5 March, that he was being made redundant. Generally, maintenance workers are the last to be let go. He asked the employer if other work was available and told there was not. His position was that the employer made no effort to deploy him to another area where work was available. Around the same time that the employer gave the employee notice that his position was being made redundant the employer had advertised a number of vacant positions but did not offer any of them to him. The e mployer's position was that the employee had not applied for any of the vacant positions and in any event he was not suitable for them. Further, the employee maintained that the employer gave no consideration to other alternatives such as putting him on short-time. He met twice with the employer and not three times as the employer suggested. He was upset at the meeting of 10 March when the employer told him that it was not necessary for him to work anymore. The employee felt that he was selected for redundancy because he had organised resistance to the

cut in wages. The claimant asserted that he was escorted off the premises at the end of the meeting of 10 March. This assertion was denied by the employer.

Determination

The respondent's business was in decline. On reviewing its overall operations a decision wastaken to outsource the maintenance function to a contractor who could do the maintenance asand when required, as well as the major repairs which hitherto had been done by techniciansfrom Germany and England, which had resulted in downtime in the manufacturing process witha cost to the company, which cost was eliminated in the new structure. The employer's assertion that the level of expertise required for the job had changed drastically and that theemployee did not have the full range of skills now required was not contested. Downtime isnow eliminated.

In these circumstances the Tribunal is satisfied that the circumstances in this case come within the definition of redundancy in section 7 (2) (c) of the Redundancy Payments Acts, 1967 to 2007. Section 7 (2) provides that:

"... an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is attributable wholly or mainly to -

(c) the fact that his employer has decided to carry on the business with fewer or no employees, whether by requiring the work for which the employee had been employed (or had been doing before his dismissal) to be done by other employees or otherwise , or

The issue of unfair selection for redundancy does not arise as the employee was in a stand-alone position. Furthermore, there was no evidence to support the contention that he should have been offered any of the positions advertised by the employer.

For the above reasons the appeal under the Unfair Dismissals Acts 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)