

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

UD1736/2011

against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. V. Gates
Members: Mr. M. Noone
Mr. F. Keoghan

heard this claim at Dublin on 18th January 2013

Representation:

Claimant:

Evans Little O'Reilly, Solicitors,
Solution House, 139 St. Peters Road, Walkinstown, Dublin 12

Respondent:

Tiernan Doherty, IBEC,
Confederation House, 84/86 Lower Baggot Street, Dublin 2

Respondent's case

The respondent provides security, cleaning and other services to commercial clients on a contract basis and the claimant was employed as a Security Officer from 28th April 2008 until he was made redundant on 23rd March 2011. For the entire duration of his employment the claimant was assigned to one particular site. Shortly before the redundancy the client for that site informed the respondent that they were reducing by half the amount of time required for security on that site. In order to address this reduction the respondent placed all fourteen Security Officers assigned to that site on reduced working hours. However the client was not happy with this arrangement as they required more consistency and therefore the respondent decided to make seven of the fourteen Security Officers redundant.

The selection criteria used in determining those to be made redundant was "last in, first out" on a site specific basis. The claimant was one of the last seven to be employed on the site and therefore was made redundant. A letter, dated 9th March 2011, confirming the redundancy was given to the claimant.

There was only one witness for the respondent and she was not involved in any discussions with the claimant prior to his redundancy. However she was present when the claimant signed off on the form RP50 and was issued his redundancy payment. The witness could not say whether employees on other sites had less service than the claimant but told the Tribunal that the redundancies were on a site specific basis as it was that site in particular that the contracted hours were being reduced.

Claimant's case

The claimant had worked for the respondent for almost 3 years before being made redundant and told the Tribunal that there were other employees doing similar work to him and with less service than he had at the time of redundancy. Therefore the claimant contended that he ought to have been kept on and other junior employees let go. He argued that the policy of "last in, first out" (LIFO) should not have been site specific as there was no mention of this in his contract of employment.

Shortly prior to being made redundant the claimant was placed on reduced hours of working but he was told by his manager that this would only be for a few weeks and it was hoped that normal hours would resume after that. Therefore the claimant expected that he would be returned to full time working, if not on the site he was on, then on another site. The claimant was shocked when he was told he was to be made redundant as he was aware of employees on other sites who had less service than him. There was no consultation as to alternatives to redundancy and the claimant was never informed of his right to appeal the decision to terminate his employment.

Since being made redundant the claimant has been seeking employment. He has been sending C.V.s to employers and has obtained four or five weeks work since then. Recently he has obtained a category C driving licence and has been seeking employment as a truck driver.

Determination

The Tribunal carefully considered the evidence adduced at the hearing. The respondent provides security and other services to various companies across Ireland on a contract basis and the claimant was one of fourteen Security Officers on a particular site. There was a reduction in the overall hours available to the respondent on this site and initially the respondent tried to deal with this on the basis of retaining all fourteen Security Officers but reducing, by half, each of their weekly hours. However the client was not satisfied with this arrangement and the respondent then decided to make seven Security Officers redundant.

The selection for redundancy was on a site specific "last in, first out" basis. However there was no stipulation in the claimant's contract of employment that he was employed on a site specific basis and indeed the respondent reserved the right to transfer the claimant from one site to another if he so desired.

It was the claimant's evidence that he expected to be transferred to another site instead of being made redundant but this option was never discussed with him and the fact of his redundancy was presented to him as a "fait accompli". It was also the claimant's uncontested evidence that he had more service than employees on other sites at the time of his redundancy. Furthermore it was common case that the claimant was not informed of his right to appeal

the decision to terminate his employment.

The Tribunal is not satisfied that the respondent considered alternatives to making the claimant redundant even though it was within its power to do so. Therefore the Tribunal finds that the claimant was unfairly selected for redundancy and thereby unfairly dismissed by the respondent.

Taking into account the claimant's efforts to mitigate his losses and in all the circumstances the Tribunal awards him €20,000.00 (twenty thousand euro) under the Unfair Dismissals Acts, 1977 to 2007

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)