

EMPLOYMENT APPEALS TRIBUNAL

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

CASE NO.
UD1968/2011
RP2542/2011

Against

EMPLOYER (*respondent*)

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath B.L.

Members: Mr. L. Tobin
Ms M. Maher

heard this claim at Dublin on 27th February 2013

Representation:

Claimant(s) :

Respondent(s) :

The determination of the Tribunal was as follows:

The Tribunal has carefully considered the evidence adduced in the course of this hearing. The claimant has abandoned his unfair dismissal claim and proceeds with a claim under the Redundancy Payments Acts only.

The claimant commenced his employment with the respondent food group in 2003. Initially he was employed as a Warehouse Operator and ultimately was promoted to the position of Team Leader on the 2pm to 10pm shift which involved an additional allowance in his take home pay.

Two witnesses gave evidence on behalf of the respondent company to the effect that in and around 2011 the respondent company had made the decision to outsource its warehouse and distribution operations. As a food group it felt its expertise had to stay within food production and that it would suit their purposes better to use a company known as PRL to take over the storage and distribution end of the business.

The claimant worked in the respondent's National Distribution Centre as a "picker" which is a specialised job and one which the claimant performed very well. The claimant alongside his 45 other co-employees' was informed in August of 2011 that the Ballymount warehouse, wherein

they all worked was being closed down for the purpose of distribution and all the work would be moved five miles out the road to Rathcoole which is where PRL had its state of the art warehouse.

The respondent accepted that the news was not initially well received and in light of this the company had engaged in a comprehensive root and branch consultation process to deal with the many and varied concerns raised by their workforce.

The respondent company is adamant that it re-iterated again and again that the terms and conditions and pay of the employees would be unchanged by the transfer of undertaking. The evidence adduced supports the contention that all questions raised were answered in an open and transparent way.

The respondent employees were brought to see the new plant and were given lump sums to make up for the inconvenience of the move. The respondent company guaranteed a bus service for the first month post transfer.

The Tribunal accepts that the initial fears aired by the workforce were for all intents and purposes put to rest as evidenced by the fact that 44 of the employees were happy to transfer to the new Rathcoole plant.

It is common case that towards the end of the consultation process, the claimant, along with one other employee, indicated dissatisfaction with the proposed change. It appears the primary concern was the distance the claimant would be expected to travel.

In his evidence, the claimant also stated he had concern that his title of "Team Leader" would not be preserved and his pay may be effected by reason of this. The Tribunal is satisfied that the respondent company went to great lengths to give comfort to employees regarding the preservation of their terms and conditions, status and pay. The assurances given were unambiguous and there can be no doubt that the claimant's fears were without foundation in this regard.

The Tribunal notes that the contract of employment describes the claimant as a "Warehouse Operative" and not as a "Team Leader". The Tribunal notes the contract of employment dates back to 2003 and could not positively describe the claimant as a Team Leader as that promotion only occurred post 2003. The Tribunal fully accepts that the contract of employment in the course of 2011 would have to be interpreted in conjunction with any changes and promotions which have occurred in the workplace in the duration of service and therefore the claimant's concern that his contract of employment still describing him as a "Warehouse Operative" is wholly misguided.

The Tribunal has to focus its attention on the additional distance the claimant would be expected to travel to perform the employment which he had executed so satisfactorily for so many years.

On balance, the Tribunal cannot find that the change of location amounted to a fundamental change such that the claimant was made redundant under the Acts.

It is a well established legal and factual principal that from time to time employees might be expected to change workplace location during the course of employment and that this fact

cannot and does not give rise to redundancy where employees can reasonably be expected to get to their new destination.

The Tribunal cannot find that changing location a further 5 to 6 miles down the N7 amounts to a disruption which gave rise to redundancy and the claimant's refusal to move was wholly unreasonable.

The claimant is not entitled to a redundancy payment under the Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)