

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:  
EMPLOYEE

*-claimant*

CASE NO.  
UD1382/2011  
RP1847/2011  
MN1481/2011

Against

EMPLOYER *-respondent*

Under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**  
**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**  
**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr J. Lucey

Members: Mr G. Andrews  
Mr F. Dorgan

heard this claim at Limerick on 4th April 2013

### **Representation:**

\_\_\_\_\_

Claimant:

Respondent:

Dismissal is in dispute in this case.

### **Claimant's Case**

The claimant worked as a security guard for the respondent from 2004. He was not in possession of a contract of employment from the respondent. The respondent had a number of sites it operated within the same area and two sites for the same company (Z). The claimant was one of eight staff that worked in the Z sites. On the 1<sup>st</sup> of April 2010 the respondent was notified that their contract with Z was being 'restructured.' As a result, the claimant got a letter to that effect, informing him that it was proposed that only four of the eight staff would remain employed on the Z sites. The letter stated, *'I wish to formally notify you that you are being placed on protective notice. This letter is also a notification that your position may be made redundant.'* The letter further said that the respondent hoped to secure alternative employment for the claimant.

Work continued on the Z sites as normal. On the 5<sup>th</sup> of August 2010, the claimant and only one other employee again received the same notice of the 1<sup>st</sup> of April 2010 notifying them of the possibility of redundancy.

Work continued as normal until January 2011 when the claimant received a letter notifying him that he was being put on lay-off as off the end of the month. There were no prior discussions with the claimant regarding lay-off; the letter was his first notification. The claimant bumped into the Operations Manager (MK) outside the site, when asked by MK the claimant confirmed that he had received the letter, MK said to take the letter to the dole office. The claimant asked MK for a reference as he felt he needed 'to be looking elsewhere'; MK said he would put a reference in the post. The purpose of the reference was too find another job.

The claimant received a phone call from BH (a supervisor) on the 28<sup>th</sup> of January 2011 to say the contract with Z had been extended to the 31<sup>st</sup> of January. The claimant again asked for a reference this time from BH; this was received by the claimant and dated the 4<sup>th</sup> of February 2011. The reference stated, *'Due to the loss of the contract in the site where he worked we had to terminate his employment.'* The claimant was in no doubt that his employment had beenterminated. The claimant was not offered any alternative employment, part-time or otherwise.

The claimant instructed his representative to write to the respondent on 18<sup>th</sup> of February 2011 seeking for his employment to be re-instated. The claimant was hoping to return to work. Only one other staff member that had been working on the Z sites had been put on lay-off with the claimant, the claimant had longer service than most. There was never any explanation as to why the claimant was selected or any formal discussions or meetings concerning the redundancy or lay-off. If the situation and the alternatives had been discussed properly with the claimant he would have accepted any alternative position.

The claimant was aware of the circumstances of three of the staff he had worked with on the Z site; two employees with less service were moved to other full-time positions, a third employee was put on reduced hours but remained in employment and only one other was put on lay-off.

On the 18<sup>th</sup> of April 2011 the respondent wrote to the claimant directly stating, *'I refer to your application for redundancy we recently received and understand that you continue to be on lay-off...I wish to make a proposal...that you continue as a full-time officer on the system...thatyou would be placed on short-time for a temporary period. This means you would work reducedhours until a full-time job becomes available.'* The claimant had never made any applicationfor redundancy and had 'no idea' what the respondent was 'talking about.' The claimant's representative replied on his behalf requesting that he be re-instated on full-time hours as he hadbecome aware that a full-time position had become available. The respondent replied by letterdated the 6<sup>th</sup> of May 2011 stating that there were no full-time positions available, they wouldcontinue to seek alternative employment for the claimant and that they could not identify thefull-time position the claimant's representative had referred to in the letter.

By letter dated the 3<sup>rd</sup> of January 2012 the respondent invited the claimant to attend a meeting to discuss his employment situation. The claim had been lodged with the Tribunal in June 2011. The claimant declined to attend this meeting as 1 year had passed since he was employed by the

respondent and he had lodged a claim with the Tribunal.

By letter dated the 31<sup>st</sup> of January 2012 the respondent offered the claimant two possible full-time positions. The claimant declined this offer as too much time had passed and he had lost all trust and confidence in the respondent.

A further letter was sent to the claimant on the 15<sup>th</sup> of January 2013 stating that he was now on short-time as there was no alternative employment available.

The claimant gave evidence of loss and his attempts to mitigate his loss.

### **Respondent's Case**

The Security Operations Manager (MK) gave evidence of the circumstances around the re-structure and loss of the contract with the Z sites. MK spoke to all the staff on the sites on a regular basis; he does not recall specific conversations but did convey the fact that they were being put on lay-off. Standard procedure, when a contract is lost is to put all the staff on lay-off or part-time until suitable alternatives are found. The provision for lay-off is contained in the contract of employment. Staff are only re-deployed when a vacancy comes up. When the Z sites closed there were some staff retained, but all on a part-time basis initially; none of the claimant's colleagues were placed directly into a full-time position. The claimant was put on lay-off and not offered part-time work as it was MK's understanding that he would only accept a full-time position.

MK agrees that it is clear from the reference in February 2011 that BH considered the claimant's employment terminated. The HR department gave the direction and made the decisions on which staff to be put on lay-off. Only full-time staff are put on lay-off as part-time staff work on a number of different sites at a time and are not tied to one position. The claimant was in a dedicated full-time position so was not moved to an alternative site. There were no management meetings to discuss the lay-offs or any selection criteria discussed. The three staff that worked directly with the claimant are all back in employment.

BH gave evidence that he wrote the reference of February 2011 on the understanding that the claimant was on temporary lay-off. BH used the term 'terminated' in reference to the claimant's employment on the specific Z site. BH was not involved in the selection for lay-off or redundancy. The claimant had only ever worked on the Z site for the respondent.

### **Determination**

The Tribunal are satisfied that, without any meaningful discussion or consultation with the

claimant regarding his lay-off or the alternatives, he was entitled to believe his employment was terminated on receipt of the reference of the 4<sup>th</sup> of February 2011 which stated, *'Due to the loss of the contract in the site where he worked we had to terminate his employment.'*

The Tribunal find that the claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds and awards the claimant €9,000.00 in compensation. Consequently the claim under the Redundancy Payments Acts, 1967 to 2007 is dismissed.

The Tribunal award the claimant €2,327.00 being the equivalent to four weeks pay in lieu of notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)