

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE,
-claimant

RP475/2011

CASE NO.
UD374/2011

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 D. Donovan B.L.

Members: Mr. P. Pierce
Mr. J. Jordan

heard this claim at Wicklow on 27th September 2012

Representation:

Claimant:

Respondent:

Respondent's case:

The Tribunal heard evidence from a witness for the respondent who is the owner. He explained that the claimant was initially employed by a previous incarnation/ respondent employer (RESL) in August 2001. The witness was a 50 % owner of RESL. The claimant was the electrical foreman. The witness could not say if the claimant "was on the tools", (i.e. that the claimant did manual work). In 2003 the witness and the other owner decided to split up the company and the witness formed the respondent company. He asked the claimant to become a director of the company and he did so. The claimant was listed as a director on the Company Registration Office list. The claimant resigned as a director in 2011.

The witness explained that the claimant liaised with builders and architects and was a projects director. He did not work "on the tools" during 2002 to 2003. It might have been possible that he was sometimes "as a matter of course". He thought that the claimant had worked for twelve or more days using his work tools. The claimant's pay was higher than that of a manual worker.

Towards the end of 2008 they had four projects which came to an end and they had nothing to replace them with. The work they were doing in a national school ended in November 2008 and they had no jobs until July 2009 apart from a small job in between. Between May 2009 and September 2009 they had no work. In March 2009 they were on a three-day week

In July 2009 they had a job in DIT, in October 2009 they had a job in a national school, in September they had a job in the Botanic Gardens; these were all small jobs which did not cover the costs of running the business. He had to borrow money from a bank, from his parents and from the credit union, all in all about €xxxx. The company was in €xxxx debt. On or about January 2009 they all had taken a ten per cent wage cut.

The company had circa six workers in total including himself and the claimant. There were four workers on the tools but neither he nor the claimant worked on the tools.

The witness explained that he had to notify the claimant that his job was redundant effective from 27th August 2010. They did get a project in September 2010 and this was a project that they had tendered for one year earlier. He had two works on that job and one of them (P) had been with the company since 2000 and the other worker (K) was an apprentice. K was close to finishing his apprenticeship; some five months off of finishing his apprenticeship. There was not enough work to keep himself and the claimant in the role of project director.

He did not use the last-in-first-out principle because the workers he kept on were on the tools and he had to retain the skilled staff. The staff that were kept were on or had been on temporary lay-off also.

He did not employ another project director and he did not see the need for another one into the future. He did not consider putting the claimant back on the tools because he had been off them for so long. He himself was a qualified electrician but he would not go back on the tools. The claimant was fully aware of the economic situation of the company.

The witness gave extensive evidence as to the financial status of the company. He explained that the company is still overdrawn.

In cross-examination it was put to the witness that the claimant had at one time offered to go back onto the tools. The witness denied that this was the case and stated also that the claimant had not worked on the tools since 2003. Regarding pension payments; "every single penny has been paid".

Claimant's case:

The Tribunal heard evidence from the claimant. He told the Tribunal that at one point he spent a total of 66 weeks on reduced pay. The reduction was €163.00 per week. He was contracts manager at was told that he would have to accept a pay cut or to accept a position of chargehand which was a step below his position which was as a foreman.

When he was asked in 2003 to take on the title of director he was still on the tools.

In 2009 the company suggested that they were in financial straits and requested an overall 10% pay cut and they all agreed to this. Projects they had expected did not materialise. He suggested that they would go on a three day week and they did. This kept the company afloat. The amount of tenders that the company won decreased.

The witness then stated the he was then put back on a five day week and that the contention that

the reduction in work “flies in the face (in) that I was put on a five day week”. The witness was asked if he was saying that there was no reduction in work and no reduction in monies arriving into the company. He answered in the negative and that it was for the company witness to say why he was put on a five day week. The witness stated that there were times that there was not a full day’s work but tenders were still arriving in. He also had to compile manufacturing manuals and to chase people who owed the company money; he was quite busy. Also, he did do electrical work in 2010.

In June of 2010 when the owner was on holidays they were told that they were successful in a tender for a Garda station and the provisional start date was when the owner was on holidays. He was tasked with looking for electricians and labourers. He tried to contact the owner.

The owner then told them that he would have to put them on temporary lay-off. They received a letter stating that they were on lay-off. There was no mention of redundancy as the “project was still there”. He could not get further information from the owner.

He did eventually get to speak to the owner and the owner told him that there was bad news that the lay-off would have to be permanent. That there would have to be redundancies and that “they were all in the same boat”. He was shocked because the project was still there. He signed the Redundancy form because he thought that the company was gone; he would not have signed the form if he had known that other employees had not been permanently made redundant.

He gave evidence as to his loss; he is currently self-employed as an electrician.

Determination:

Having considered the evidence adduced at the hearing the Tribunal is satisfied that a redundancy situation existed in the respondent company due to a reduction in work load and due to financial difficulties. The Tribunal finds that the respondent effected the selection between the claimant and one other employee on the basis of the need to retain skills rather than applying the principle of “last in first out”. The Tribunal finds that the respondent was entitled to effect selection on the basis of the need to retain skills in order to secure the survival of the business.

The Tribunal is satisfied that the procedures effected in and about the redundancy were reasonable in the particular circumstances of this case where the number of employees in the company was small, where the selection pool was in effect two employees, where the retained employee was more crucial to the survival of the business and where the difference of the length of service of the claimant and the length of service of the retained employee was a few months.

Accordingly, the claim under the Unfair Dismissals Acts 1977 to 2007 fails.

The claim under the Redundancy Payments Acts 1967 to 2007 was withdrawn.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

