

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE

- *claimant*

UD2152/2011
RP2759/2011
MN2176/2011
WT874/2011

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 ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. Gilvarry

Members: Mr. D. Morrison
Mr O. Nulty

heard this claim at Carrick-On-Shannon on the 28 February 2013 and the 19 April 2013

Representation:

Claimant:

Respondent:

The claimant has received a redundancy lump sum payment, his minimum notice and holiday entitlements, therefore the claims under the Redundancy Payments Acts, 1967 to 2007, the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and the Organisation of Working Time Act 1997 are withdrawn.

Respondent's Case

The respondent is a large multinational Bank that has undergone a major re-structuring process making 240 positions redundant since January 2008. The selection criteria used for this process was agreed by the employee forum who had the opportunity to evaluate and ultimately agree the selection criteria in August 2010. The claimant chose to opt-out of the selection process and failed to engage with the respondent. At all times he could have co-operated in the selection process possibly changing the final outcome.

The claimant worked in the channel performance optimisation (CPO) department. The head of the CPO team (JW) gave evidence. Of the six staff on the team two positions were to be made redundant. As part of the overall performance appraisal process, an annual and mid-year review meeting takes place to rate the employee's performance as per their performance development plan (PDP). The results of which are either meets expectations, exceeds expectations or does not meet expectations. The first step of the selection process is the PDP results and the disciplinary record. Only if there are a number of employees with the same PDP score (pool) the agreed redundancy selection criteria is utilised.

On the 14th of April 2011 an announcement was made that the team the claimant was part of would be reduced from 6 to 4 and that there would no longer be a need for a 'team lead'. The claimant's duties were split equally between normal duties and supervisory duties. The decision to eliminate the team lead position did not mean the team leader would automatically be selected for redundancy. The normal duties and the team lead duties are so similar the team lead role was not distinguished as part of the selection process. As part of the announcement it was stipulated that,

'selection will be based on year end PDP scores from 2009 and 2010, together with any warnings on file. In the event of multiple associates falling into the same criteria score population then selection criteria will incorporate a competency based interview process.'

The claimant was issued with a letter of the same date outlining the business reasons for the redundancies and the selection criteria that would be used. This letter also stated that, *'if your redundancy from your current role is confirmed, we will make every effort to support you in your attempts to identify a suitable alternative position elsewhere in the bank.'*

The changes were to take effect on the 1st of June 2011. The announcement was made to the entire team and then individual meetings took place. At the individual meetings the employees were advised if their individual scores kept them out of the 'pool' (other employees with the same score) or whether they were at risk and would have to undergo the selection interview.

The claimant achieved the same score as 4 other employees. The claimant had never disputed his PDP scores. On the 15th of April the claimant was sent a letter informing him that, *'following the application of the selection criteria you continue to be at risk of redundancy, in a tie-break situation.'* As part of the next step in the process the claimant was invited to a competency based interview scheduled for the 19th of April 2011.

The claimant wrote to his direct manager the same day disputing the PDP results stating that the 'meets, does not meet, exceeds expectations' rankings do not take the 'stack rankings' into account. The stack rankings are further breakdowns of the 'meets, does not meet, exceeds expectations' rankings (rating the result as high, medium, low). The claimant felt that he would have a different score if the stack ranking was taken into consideration as he had a 'high meetsexpectations' ranking. Within the respondent there could be 60 employees with the same PDP score so the stack ranking is used to distinguish employees for the purpose of bonus calculation and is not part of the agreed redundancy selection process. It is not an objective criteria and bonuses and therefore stack rankings do not apply to all the staff in the respondent. The claimant, in this letter declined to participate in the selection interview.

JW met with the claimant and explained the rationale for not using the stack ranking as part of the selection process. The claimant was also informed that the selection criteria that was being used had been agreed and was used universally throughout the respondent. She appealed to the

claimant to attend this interview and advised him that that if he did not participate in the interview they would be forced to give him a zero score. JW made it clear to the claimant that he was effectively removing himself from the selection process to which he replied, "I've pinned my flag to the mast." JW is in no doubt that the claimant was absolutely clear on the repercussions of his actions and that he was effectively 'volunteering' himself for redundancy.

The respondent wrote to the claimant on the 27th of April 2011 confirming that the claimant was aware that he would receive a zero score if he did not attend the selection interview and that he had said he understood the implications but still declined to attend. It was confirmed that his interview slot would remain open and that they hoped he would change his mind and attend.

The claimant did not attend the selection interview and got a zero score. By default the claimant was selected for redundancy and informed of this at a consultation meeting on the 26th of April 2011. Alternatives to redundancy were also discussed at this meeting before the final dismissal from the respondent. The claimant did not want to discuss alternatives as he did not want to remain in the respondent's employment.

At the resumed hearing on the 19 April 2013 the Employee Relations Manager (ERM) outlined the process undertaken by the employer once the decision to make a number of employees redundant was taken. The process was previously used by the employer in similar circumstances at another site and involved first setting up an employee forum in August 2010. The criteria used in the selection process included the employee's last two performance development plan (PDP) results and disciplinary file. Ranking was never part of the criteria. The forum members were provided with FAQ's to assist them answering any questions from the employees and their role was to communicate information to the employees when necessary. The claimant had the opportunity to nominate himself to the forum or vote for an associate. At no time during the process were any issues raised regarding the selection criteria. The witness believes the claimant was fully aware of the selection criteria (PDP scores and disciplinary and conduct record) at the time. She denied the criteria and selection process was flawed in any way and is satisfied that it was fair and consistent.

Claimant's Case

The claimant commenced employment with the respondent in July 2002 at first as a call taker and after nine months was promoted to call analysis with responsibility for scheduling, monitoring and reporting. The role involved liaising with the Chester site on a regular basis. He was committed to his job and fitted in well with the team. In 2010 following centralisation the claimant felt his role diminished and he was less involved in cross site communications. Having always been the "go to person" in terms of reporting and analysis he felt he was side-lined. At his appraisal meeting he was rated as 'high meets expectations' which was verbally communicated to him.

In 2010 he made his line manager aware of his concerns and expressed reservations on how his role had now changed. Towards the end of 2010 another employee joined the team and the claimant as the person who had created the reporting and analysis system was involved in the training of this latest employee. On the 14 April 2011 employees were called to a meeting and advised of the decision by the employer to make a number of employees redundant. A few days later he was made aware that he would be included in a selection pool for redundancy with six others including the team-leader. The inclusion of the team leader in the selection pool the

claimant believed was unfair as the team leader role was to be redundant. He later became aware that the team leader and the latest new employee were not at risk of redundancy and he would be required to have to attend an interview for his position. At a meeting with his manager on the 15 April the claimant expressed his concerns regarding the selection process and sought direction. Following that meeting and comments made by his manager he felt there was no point interviewing for the position. He sought independent advice and wrote to the manager outlining his concerns. On the 19 April he met with the HR manager and another manager and he was asked to continue with the process and interview. At that meeting he informed them of the comments made by his manager on the 15 April and they failed to address the matter. Due to the unfair selection process he decided for that reason he could not take part in the interview process and was therefore selected for redundancy. He denied knowing the same selection process was used for other collective redundancies in the organisation and always believed his appraisal was used only for the purpose of calculating his bonus.

The claimant's manager whom he met on the 15 April told the Tribunal he could not recall making any comments regarding how the claimant was viewed by senior management. He agreed the claimant was an excellent employee with whom he had a good working relationship. He recalled at the time of the centralisation process the claimant had expressed some concerns regarding his role.

Determination

The Tribunal has carefully considered the evidence adduced during the course of this hearing. The Tribunal were impressed with the evidence of the claimant and sympathise with the situation he found himself in. The process used in this case by the respondent to transmit such important information to employees leaves a lot to be desired.

There are many aspects of the respondent's actions which could be subject to criticism, however, the Tribunal cannot get away from the fact that the claimant failed to follow through the internal procedures which may well have led to a decision in his favour and retaining his position with the respondent. Unfortunately he did not do so and it was therefore reasonable for the respondent to select him for redundancy in those circumstances.

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

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)