

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYER

UD1480/2011

against the recommendation of the Rights Commissioner in the case of:
EMPLOYEE under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms D. Donovan B.L.

Members: Mr J. Hennessy
Mr F. Dorgan

heard this appeal at Waterford on 22nd April 2013

Representation:

Appellant: (the employer)

Respondent: (the employee) The respondent in person

Background

This was an appeal by the employer against the recommendation of the Rights Commissioner Ref: r-096375-ud-10/JOC.

At the outset the representative for the employer made an application for an adjournment of the Tribunal hearing on the basis that there was nobody from the employer available to attend at the hearing. Having considered this application the Tribunal refused the adjournment on the basis that it was the employer's appeal and that the employee had travelled from the U.K. to attend the hearing.

The Tribunal heard the evidence of the employee. As there were no witnesses there to give evidence on behalf of the employer, all the representative for the employer could do was to cross-examine the employee and make a submission.

The employee gave evidence that he was informed by letter dated 7th December 2009 that he would be made redundant from 1st March 2010 as it would not be possible to run the Shoot on the same scale as previously and that it had been decided not to continue with the Shoot next season. As a result the employee sought employment elsewhere and obtained employment from 2nd April 2010. Unfortunately that job ended in August 2010 and the employee has been unemployed since.

It was the employee's evidence that the next season Shoot did take place and that the work that he would have been doing regarding that Shoot and otherwise was now being undertaken by another person whom the employee had trained. The employee gave evidence that it had come to his knowledge that there had been discussions with another person as regards taking over the

employee's role sometime prior to the employee being informed he was being made redundant.

The employee said he had been told that if the position changed and things improved he would be contacted to come back. He was not contacted to come back although things did improve.

The employee told the Tribunal that it had been a difficult time for him and his family. As well as losing his job the employee had to move out of a cottage that went with the job and return to the U.K. uprooting his wife and children from the life they had become accustomed to and enjoyed in Ireland.

It was put to the employee in cross-examination that the employer was experiencing financial difficulties, had difficulties with a neighbouring landowner and that it was not viable to continue the Shoot as before. The employee disputed this other than he accepted that there were difficulties with a neighbouring landowner. It was put to the employee that he had sought to be made redundant and he also disputed this.

Determination

Having considered the evidence adduced at the hearing and the submission of the employer the Tribunal finds that the employee was made redundant. The Tribunal finds that a redundancy situation did not exist because the employee's position still existed.

The Tribunal further determines that even if the redundancy was a genuine redundancy fair procedures were not afforded to the claimant in effecting his redundancy for the following reasons:-

- § Possible alternatives to redundancy were not discussed.
- § There were no selection criteria agreed or otherwise; the claimant was simply selected for redundancy.
- § The claimant was not offered an appeal of the decision to make him redundant.

Accordingly, the Tribunal upholds the decision of the Rights Commissioner Ref: r-096375-ud-10/JOC and varies the award to compensation in the amount of €43,184.00 over and above the redundancy lump sum.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)