

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE – *claimant*

UD2115/2011
RP2699/2011

against

EMPLOYER
under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr C. Corcoran BL

Members: Mr B. Kealy
Mr J. Dorney

heard these claims at Dublin on 26th March 2013

Representation:

Claimant:

Respondent:

The determination of the Tribunal was as follows:-

Respondent's Case

The finance director gave evidence. The business has existed for 50 years and he expects it to continue. The claimant was the exhaust centre manager. They sell exhausts at the centre and through motor factors. Exhaust business through motor factors increased in 2010 but the business at the centre declined. During the same period the paint section of the business was also in decline.

On the basis of the decline in business the finance director decided that a redundancy was required. The decision was a commercial one and not a personal one. The 4 employees who generated sales for the exhaust business were the claimant and the three sales rep, in the finance director's view sales could be maintained with 3 employees. The 4 individuals were informed in writing that their positions were at risk and they were given a copy of the proposed matrix that would be used to choose one person for redundancy. One of the 4, not the claimant, requested an amendment to the matrix and this request was acceded to. The 4 employees all agreed that the

matrix was a fair and equitable way of assessing them. The sales director scored the matrix. The claimant was placed fourth out of 4. The claimant was made redundant.

The finance officer heard the claimant's appeal against the decision to make his position redundant. The finance officer agreed that the claimant was a diligent employee. However the volume of sales he generated was barely covering the costs of employing him. The finance director was not involved in the initial decision to make the claimant redundant. At the appeal the claimant contended that the selection process had not been fairly operated. The finance director had not raised the issue of the exhaust centre's declining profitability with him before deciding to make someone redundant. The finance director upheld the decision to make the claimant redundant.

The sales director gave evidence. 90% of the respondent's exhaust sales were through motor factors. 10% of sales were through the centre managed by the claimant. The 3 sales reps and the claimant were informed at a meeting that one of them would be made redundant. They were shown the matrix that would be used. The claimant did not object to the matrix.

The sales director scored the matrix. It was not an easy task because one person would go home. The claimant scored 4 out of 4. The claimant was given a low score for profitability. The claimant was at a disadvantage. The 3 sales reps had a closer affinity with one another than with the claimant and therefore the claimant scored lower on team work. Seniority was not a factor. The claimant was informed of the result on 24 June 2011.

Claimant's Case

The claimant gave evidence. He worked for the respondent from 2001 to 2011. He was not told his sales were down. He visited customers every month and was always looking for new accounts. All account requests were forwarded to the accounts director. In the beginning most account requests were processed but as time went on many requests were not accepted.

The claimant said that it was strange but true that when the other directors were losing sleep over his sales, the sales director did not contact him.

The claimant did not object to the matrix. His objection was with the way he was scored. His extensive product knowledge was not taken into account. Also not taken into account was his City & Guilds qualification.

After his redundancy he learned that the respondent had a new operation in Cork. A former employee was recruited to manage the new operation. The claimant was not told about the new operation or asked to apply for any of the jobs there.

The claimant established loss for the Tribunal.

Determination

The Tribunal carefully considered the evidence adduced in this case. The respondent was facing the challenge of a difficult market and the prospect of opening a new depot. Following a review of the

financial returns the finance director came to the conclusion that the claimant's position was not profitable. Unfortunately neither the finance director nor the sales director contacted the claimant to discuss solutions or implications with him.

When it came to the process of selecting an employee for redundancy, the method chosen put the claimant at a distinct disadvantage. His role was dissimilar to that of the 3 sales reps and he had a more distant relationship with the sales director who scored the selection matrices for all 4.

The Tribunal finds that the selection process was unfair and therefore the dismissal of the claimant was unfair. The claim under the Unfair Dismissals Acts 1977 to 2007 succeeds and the claimant is awarded the sum of €58,000.00 in addition to any payment he has already received.

The claim under the Redundancy Payments Acts 1967 to 2007 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)