

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE *first named claimant*

UD757/2012

EMPLOYEE *second named claimant*

UD759/2012

EMPLOYEE

third named claimant

UD760/2012

against

EMPLOYER

respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr G. Hanlon

Members: Mr. N. Ormond
Mr N. Dowling

heard this claim at Dublin on 19th June 2013

Representation:

Claimant(s):

Respondent(s):

The determination of the Tribunal was as follows:-

Respondent's Case

The MD of the respondent JH told the Tribunal that the respondent designed and supplied facades to buildings and was associated with the construction industry. It has a factory in Dublin and now has twenty five employees in the factory who are on temporary layoff since August of 2012. In 2010 he received a letter from his accountants which outlined that the trading situation in the respondent was serious. In April 2010 the respondent met with employees who worked in different areas and explained that a wage cut of 10% would be enforced. Voluntary redundancies were introduced and a number of employees volunteered for this. The first redundancy six redundancies were implemented in 2010. A number of redundancies were implemented in 2011 and 2012 some of which were voluntary. Employees with specific key skills were retained. The claimants were general operatives and did not have specialised skills. The site that the claimants were employed on closed and they were assigned to work in the factory. To undertake work as banks man you needed 100 logged hours' work with a qualified banks man.

Employees were notified of the redundancy at the same time. A number of employees were employed for twenty years and a high percentage had service in excess of fifteen years. The quality and calibre of employees was excellent and it was difficult for the respondent to decide on who to retain and who to let go. Turnover was reduced significantly.

In cross examination he stated that in April 2011 he explained the situation at a meeting and wage cuts were to be introduced. He explained that the respondent had to review the number of employees and implement possible redundancies. Employees were on notice of redundancy. He disagreed that the claimants first heard about redundancy on the 23rd September 2011 as there were on-going redundancies in the respondent.

The respondent had on-going meetings with the union. Redundancy was dealt with at every meeting. The union could have brought different individuals to each meeting. If he were on site he would talk to the employees regarding how the company was doing. Employees were brought from the site to the factory when the work on the site was finished.

Six employees were retained who were hired after the claimants as they had different skill sets than the claimants. He had no other employment he could offer the claimants.

In re-examination he stated that the respondent paid all union fees for employees.

In answer to questions from the Tribunal he stated that the respondent paid employees union contributions and did not deduct these contributions from their wages. All employees were invited to meetings. If employees were on site the foreman communicated with them.

GH the contracts director told the Tribunal that he was employed with the respondent for twelve to thirteen years. He reported to the MD and was familiar with the claimants and redundancy. In 2010 he was in contact with employees on site. Redundancy was discussed at meetings and all employees were invited to the meetings. From April 2010 to September 2011 he was in contact with the employees on a regular basis. He attended the meeting in April 2011. Employees were made aware that there were problems in the respondent and redundancies were sought.

In cross examination he stated that he was on sites and spoke to employees. He could not recall speaking to employees directly regarding redundancy.

In answer to questions from the Tribunal he stated that he was not aware if the department had been notified regarding redundancies. There was about 80% attendance at meetings.

Claimants' Case

The first named claimant RC told the Tribunal that he commenced employment with the respondent on the 7th April 2004. He received a contract of employment on the 27th January 2009. The word "redundancy" was circulated for quite a while and the respondent was awarded less and less contracts. Nothing was mentioned to him about redundancy. He attended

a meeting in May/July 2011 and the union representative informed employees that there would be some redundancies but LIFO would be adhered to. He was informed of his redundancy the day he was made redundant. He expected to be made redundant at some point but employees who were employed after him were retained and he thought they would be made redundant before him. All employees undertook the same roles. One of the employees who was employed on a project in Holland undertook the same work as he did and he was employed after him. He sought alternative employment after he was made redundant.

In cross examination he stated that he could not recall the exact date a meeting with the union took place but it was May/July 2011. He was aware of redundancy in April 2011 but he did not attend a meeting regarding this. He agreed that one of the employees employed after him was a banks man. He stated that he could be qualified to be a banks man as he undertook work on a cherry picker. Anyone with training could work as a banks man. He accepted that an employee employed after him had specific certification but he should have been made redundant before the claimant. Three employees who went to work in Holland with the respondent did not have any extra qualifications. He received his redundancy payment in full.

He sought alternative employment on building sites. He did not return to Poland at any stage. He signed up for an English language course.

In re-examination he stated it is difficult to find a job due to his language.

In answer to questions from the Tribunal he stated that he did not know how long it took to obtain a certificate as a banks man. A number of employees had certificates and qualifications for a cherry picker.

The second named claimant SK told the Tribunal that he commenced employment with the respondent in March 2004. He could not recall attending a meeting with the union on the 1st April 2010. Pay cuts were mentioned to him. He found out about redundancy when he received a letter. He did not know how many employees were retained who were employed after him. After he was made redundant he worked for three months in Norway. He looked for work in Ireland but did not find work. At the moment he is not working and has been under medical treatment for six months.

In cross examination he stated that he attended about four meetings from April 2010 until he lost his job. He was aware of voluntary redundancies in 2010. He received information in 2011 before the first group were made redundant. He did not know what the four employees were doing in Holland. He could not undertake the job of banks man and he would need to be retrained. He believed if there was a redundancy there should be a process. No one knew what was going on. He has been receiving medical treatment since September 2012. He did not know how long it took to become a banks man.

The third named claimant DS told the Tribunal that he commenced employment with the respondent in August 2004. In 2011 twelve employees were made redundant. There was no meeting and no consultation regarding redundancy. He has not worked since his employment ceased. He tried to obtain some employment and he went to a recruitment agency. He has worked three weeks in total since his employment ended. He opened a shop in September 2012. He had the same skills as employees who commenced employment after him apart from one employee who was a banks man. In 2003 he attended training for banks man. He refused to do glazing in the respondent and he was told that he could go home.

In cross examination he stated that he did not have a CSCS card to undertake work as a banks man. He attended meetings in the respondent but he never attended meetings regarding redundancy. He voted for a strike in relation to ten per cent pay cut. He received a notice in September 2011 that he was being made redundant. He knew he would get redundancy but he did not know how much.

He disagreed that he was let go in accordance with an agreement with the union. From September 2011 to September 2012 he worked for three weeks and he then remained at home to look after his children. He opened a shop in September 2012.

Determination

Based on the evidence adduced the Tribunal finds that a genuine redundancy situation existed. The claimant's maintained that employees who had lesser service than they had were retained but these employees had more skills than the claimants. The claimants were not unfairly dismissed and their claims under the Unfair Dismissals Acts, 1977 to 2007 fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

