

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE,

CASE NO.
UD1898/2011

against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Hayes BL

Members: Mr. J. Horan
Mr. J. Flannery

heard this case in Dublin on 1 May 2013

Representation:

Claimant(s):

Respondent(s):

The determination of the Tribunal was as follows:-

Preliminary Issue:

The respondent's representative made a preliminary application. He contended that the claimant was issued with a redundancy payment on 22 March 2011 and signed a full and final settlement agreement for all claims on 22 March 2011. As he had a week between receiving the payment and signing the agreement he was not under any undue pressure to sign the waiver agreement. The respondent did not have a signed copy of the agreement as the company premises was the object of an arson attack and all documents were destroyed.

The claimant's representative produced a copy of the settlement agreement which was signed and dated on 22 March 2011. The claimant was not given the opportunity to seek advice on the document. He was told to sign the agreement and take the cheque.

The Tribunal heard sworn testimony in order to decide the preliminary issue.

The respondent's managing director (JA) told the Tribunal that the claimant, a sales executive, had come under his control but the claimant's figures "were not up to it". Although "reps could bounce ideas off each other" the claimant's figures were the worst and did not cover his diesel and phone. He was given a severance agreement to sign. On Friday 18 March 2011 JA was "letting him go". The claimant asked to be made redundant. JA replied that he would let the claimant have an extra week's pay and make him redundant.

Under cross-examination JA did not deny that the claimant was being dismissed on 18 March 2011 but told the Tribunal that, when the claimant asked about redundancy he asked his "HR girl" to look into it. All documents were given on 22 March 2011. JA felt sorry for the claimant. They agreed the money for him. The claimant's sales for a whole month had been three or four hundred euro. His phone and diesel had cost more.

JA said to the Tribunal that redundancy had been the claimant's idea. JA was letting him go and could not afford to keep him any longer. The claimant had said that JA knew his personal circumstances and that redundancy would make things easier for him. In an earlier year the respondent had made somebody redundant because he had a sick wife. JA had "covered" the claimant for a year and agreed redundancy to do him a favour. The respondent was "trying to make things simple and clean". It did not "abandon" employees.

Giving sworn testimony, JS said that she looked after payroll and HR and that she had met the claimant on 22 March 2011 when she could have had the severance agreement and redundancy documents but that the claimant "did not sign there and then". The claimant "would have went off". She could not recall the claimant signing documents in front of her. The claimant did not refuse to sign but did not sign on the day. JS said that he was "quite happy to get redundancy. He was not replaced. Nobody else was made redundant.

Under cross-examination, JS said that the claimant had "said casually that he was wary of the paperwork" but that he had wanted everything to be ready for him.

Giving sworn testimony, the claimant said that he had had only a very brief meeting and that he did not think that he had had time to reflect on the documentation. He had taken no legal advice at that time but he "was given no option".

Under cross-examination, the claimant said that he had been told that he was being made redundant "for some reason or other" and that JA had said that he was making the claimant redundant and that others would follow. JA had previously had a meeting with him about his sales which had been good until the recession. The claimant accepted that it might have been true that his sales were not covering his diesel. He did not recall saying that redundancy would be easier for him although he did say that he had been made redundant in previous positions.

The claimant said that he had read the documentation briefly and signed it. He had believed that he was not the only person to be made redundant.

When it was put to him that he had not signed until the beginning of April the

claimant accepted that he had looked at the documentation “a few days later”. He did not recall re-reading documentation “in the three weeks afterwards”. About three months after his redundancy, he started to look into the position and consulted more than one solicitor.

Questioned by the Tribunal, the claimant said that it was never put to him that he was let go for his performance. There had been sales meetings . His sales were “fine” but team sales were not what the respondent expected. He accepted that he might not have been covering costs but told the Tribunal that he had not been alone in that and that his sales figures had been quite good in the past.

The claimant said that he had had no contact with JA after 22 March 2011 and that he was not to say anything to anyone about his redundancy.

Determination:

Having carefully considered the evidence adduced, the Tribunal was not satisfied that the claimant had been put under pressure. On the other hand he had looked for the best package he could get. Nobody was engaged to replace him. He understood the concept of redundancy. The claimant signed an agreement in full and final settlement of his claims in consideration for which he received in excess of his statutory entitlements. While he may not have sought legal advice until some months later, he had had the opportunity to do so but had declined. The Tribunal is satisfied that he had not had to sign the document there and then but had been able to take it away with him to consider. The claim under the Unfair Dismissals Acts, 1977 to 2007, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

