

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.  
UD607/2012  
RP445/2012

EMPLOYEE *-claimant*

against

EMPLOYER *-respondent*

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms O. Madden B.L.  
Members: Mr. C. Lucey  
Mr. G. Whyte

heard this claim at Dublin on 29th July 2013

#### Representation:

Claimant: Mr. Kevin Maguire BL instructed by Mr. Patrick J. Ryan,  
Ryan & Ryan, Solicitors, 5 St Brigid's Road, Clondalkin, Dublin 22

Respondent: Ms MP Guinness BL instructed by Ms Christian Carroll,  
Orpen Franks, Solicitors, 28 & 30 Burlington Road, Dublin 4

#### **Background:**

The respondent company supplies and installs synthetic grass pitches and also provide landscaping and gardening services. The claimant was a chief installer. The company ran into financial difficulties and had to implement redundancies. The claimant did not disagree that the company was in financial difficulty. The claimant claims that he was unfairly selected for redundancy.

#### **Respondent case:**

The Tribunal heard evidence from a company director. He told the Tribunal that they had ten employees in March 2012 and five of these were installation crew who installed the artificial pitches. They had a good relationship with staff.

Since 2009 the company turnover decreased. In October or November 2010 they met their accountant. They discussed the possibility of redundancies but they did not want to do that so they decided on 10% reductions in pay.

The company profit decreased again. They had a management meeting in December 2011 to see if they could keep the company going. The company had a cash flow crisis. They had not

made payments on their overdraft in 12 months. The bank threatened to call in the facility and if the bank did that then the company would have to close immediately. They looked again at ways to make savings, and looked at making redundancies where the greatest savings could be made. They did not select the positions to be made redundant based on last-in-first-out (LIFO) but made the decision based on those who earned the highest amount of money. A document was opened to the Tribunal which outlined the employees pay. The claimant and another employee (BT) had the highest pay along with one other employee who they had to keep as he was a sales director in the north of the country. Part of the claimant's job was to drive the company truck but they sold the truck because it was cheaper to hire a third party to transport the equipment/ stock.

The witness was asked if they consulted with the claimant regarding the redundancy and he replied "unfortunately no". The witness was asked if consulting with the claimant would have made a difference and he explained that it would not have because the company was in a direposition.

They called the first employee (BT) into a meeting to tell him that his position had been made redundant. They then asked BT to call the claimant requesting that he attend a meeting. BT asked the claimant to meet with the respondent company and also confirmed to him that he was being made redundant. A meeting was subsequently held with the claimant and the respondent confirmed that his job was being made redundant. DF, a company Director, informed the claimant that redundancies had to be made in order to save the company.

The following week they met with BT and they offered him a junior position that was available and BT refused it. They did not meet with the claimant to offer him the role because of "animosity" between the parties. They had asked the first employee to convey the offer to the claimant. They did not replace the two roles. The decision to select the claimant for redundancy was purely financial.

The evidence from their accountant was that staff pay ran to 50% of costs so he was anxious to cut staff pay

**Claimant's case:**

The claimant gave evidence to the Tribunal. He explained that he could do any aspect of the work in the respondent. He "stitched the pitches from start to finish" he also drove the lorry. He was called to a meeting with the Directors. He had been forewarned by a colleague of the reason for the meeting. The claimant told the Tribunal that at the meeting he asked a Director if there was any alternative to redundancy but he was told that there was not.

The claimant gave evidence as to his loss.

**Determination:**

The respondent in this case is within its rights to establish whatever criteria that it needs to select redundancies. However, in this instance the Tribunal are not satisfied that the criteria established was in a fair and transparent manner.

The claim under the Unfair Dismissals Acts, 1977 To 2007, succeeds. The Tribunal determine

that compensation be the most appropriate remedy and awards the claimant the sum of €13,000.00, as is just and equitable having regard to all the circumstances.

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

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)