

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE – claimant

CASE NO.
UD634/2009
MN646/2009

against

EMPLOYER – respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr T Ryan

Members: Mr T O'Sullivan
Mr O Nulty

heard this claim at Drogheda on 25th January 2010

Representation:

Claimant(s): Mr Conor Minogue
Patrick C Markey & Son, Solicitors
South Quay, Drogheda, Co. Louth

Respondent(s): Mr John Barry
Management Support Services (Ireland) Limited
The Courtyard, Hill Street, Dublin 1

The determination of the Tribunal was as follows:

Respondent's Case:

A Director of the respondent company gave evidence that the claimant was not employed as a welder but as a semi-skilled operative. He welded as part of his work, but had failed two exams and so his qualifications had expired. He was based in the workshop and not onsite.

In March 2008 a major contract came to an end and there was nothing to replace it. Staff numbers were reduced by thirty-three with staff either being made redundant or leaving. Others, such as the claimant, were kept on to sweep floors in the hope that other work would come up.

After speaking to a human resources consultant the Director issued a staff notice to all staff, dated 10th October 2008. It stated that the management were considering layoffs, redundancies and pay cuts. Redundancies were not selected on a “last in first out basis” but on performance and conduct record. Many staff were in a union but there was no contact from the union.

The company’s situation deteriorated further and the claimant and six others were put on temporary lay-off for two weeks. This was extended for a further two weeks. There was still no improvement in the company’s situation and so the company made the claimant, and the six other staff, redundant. He was told that he could not keep the staff on lay-off for more than four weeks. The claimant was paid his redundancy lump sum payment. The claimant came to the office and signed for his redundancy and they shook hands. A further six staff were made redundant in 2009.

The Director selected the seven staff for lay-off based on their skills. The claimant mainly used a particular machine and they had no work to do on that machine. He had failed his welding test and he couldn’t operate site machinery. He had once refused to go onsite, as he had a shop with his wife and he did not want to be too far from home.

During cross-examination the Director conceded that the claimant had not been paid in lieu of minimum notice. The first time the Director had seen qualifications of the claimant was at the hearing. The claimant had failed tests in certain types of welding. The company now only had fitters and fabricators, who held welding qualifications as part of their overall qualifications. He agreed that the claimant worked on various sites.

The Director contended that no one in the same situation as the claimant or with less service was kept on. He was not aware then that he should have contacted the union. Some semi-skilled men were kept on who were working onsite. Working in the workshop suited the claimant, as he did not drive machinery. The qualifications he had covered him for most of the work he did.

A second Director gave evidence that he was the manager of the workshop. He had asked the claimant and three others if they were available for work on a dredger, but the job did not come up. He also asked the claimant if he would be available for a job in Lifford, but the claimant did not want to work away from the area. The claimant was competent in English.

During cross-examination the witness stated that as far as he could recall the Lifford job was sometime in autumn 2008, but he was not sure. He was unaware that the claimant’s shop closed in June 2008 as he still received calls about it after the claimant had finished.

The Director contended that the operator of the plasma-cutting machine had a CAD operator qualification. The claimant never approached him about using the new machine. Employees who were kept on were paid more and less than the claimant. The claimant could not do fitting and forklift work if he was not qualified to do so.

Claimant’s Case:

The claimant believed that employees who were kept on after him were younger, less qualified and earned more than he did. He believed that the company chose to let cheaper employees go. An employee with less service, who operated a new plasma-cutting machine, was kept on. The claimant had operated the old manual machine and he was never given an opportunity to operate the new automatic one.

He contended that he was the only qualified welder the company had. He was never told the reason he was let go was because of his qualifications. He contended that he often worked onsite and that he drove machinery, including a forklift. The supervisor often asked him questions about welding jobs. The claimant disputed the allegation that he had refused a job in Lifford. He had never been asked to do it. He was asked about the dredger job, but he never heard about it again.

He contended that the company never spoke to him about the redundancy or the lay-off. He just received the letters. He had no notice of the redundancy prior to the letter of the 20th November 2008. He signed for his redundancy cheque on November 26th 2008. He did not know what the roles of the other staff were who were made redundant at the same time as him. Some were fitters. He did not do cleaning he did other tasks. The test that he failed was a speciality welding task. He was qualified for the normal work that he did. He was a member of the TEEU. He had no consultation with the union. There were no performance issues raised with him.

Determination:

The Tribunal is critical of the fact that the claimant was not furnished with a contract of employment or a company handbook dealing with details of its redundancy policy. The Tribunal is also critical of the fact that there was no proper or adequate consultation with the claimant, or his representative, in relation to the impending redundancy.

However, the Tribunal is satisfied that there were widespread redundancies in the company because of the downturn in the construction industry. The selection of the claimant for redundancy was not unfair, therefore the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

As the Claimant was not given his proper notice of termination of his employment (a fact conceded by the Respondent) the Tribunal awards the claimant €2654.40 (two thousand six hundred and fifty-two euro) under the Minimum Notice and Terms of Employment Acts, in respect of four weeks notice due to him.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)