

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE

UD1324/2011
RP1952/2010

against
EMPLOYER

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. P. McGrath
Members: Mr. B. Kealy
Mr. S. Mackell

heard this claim at Naas on 7th June 2011

Representation:

Claimant: The claimant in person

Respondent: Athru Solutions, Unit 10k, Drinan Enterprise Centre,
Swords Enterprise Park, Feltrim Road, Swords, Co Dublin

Respondent's case

The respondent company was founded in 1985 and went through a tough period in the '80s and '90s but was successful up to 2008. However by September 2008 the company was making continuous losses and had to take cost cutting measures. Initially the respondent made six positions redundant and this was followed by pay cuts and reduced hours for the remaining employees.

The claimant was ill for a long period of time in 2007 and the respondent asked him to consider retirement in 2008 around the time of his 66th birthday. However the claimant did not retire and informed the respondent that he wished to continue working until he was 70 years of age. In 2008 the respondent drew up a one-year contract based on a sales role and gave this to the claimant. However sales continued to decline and the respondent took the decision to make 6 positions redundant. A matrix was drawn up based on the needs of the company and this was used to assist the respondent in identifying the positions to be made redundant.

The claimant's job was identified as one of those to be made redundant and he was duly informed of this. The matter was discussed with the claimant on a number of occasions and he did not object at that time and accepted payment of the redundancy lump sum. The claimant's employment

as terminated due to redundancy on 21st May 2010.

Claimant's case

The claimant contended that he was unfairly selected for redundancy. The claimant was employed as the Service Manager. However he was trained as a forklift engineer and had been employed with other employers previously in this capacity. Therefore he possessed the skill sets required by the respondent and could have been flexible in terms of his job.

Sometime in 2008 the claimant was asked to retire but he came to a “gentleman’s agreement” with the respondent whereby he could remain in employment until he was 70 years of age. The claimant also began working from home at that time and his role changed to that of sales.

On the 20th April 2010 the claimant was given one month’s notice of redundancy and his employment was terminated on 21st May 2010. The claimant had not seen any “matrix” and stated that his job was taken over by another employee. The claimant confirmed that he himself had less service with the respondent than any of the remaining employees, including the person who took over his job.

The claimant was not offered a shorter working week or a pay reduction and felt that he ought to have been offered these as an alternative to redundancy.

Determination

Having considered the evidence adduced the Tribunal is satisfied that a genuine redundancy situation existed at the time of the claimant’s dismissal. Furthermore the Tribunal is satisfied that fair procedure was followed in the selection of the claimant for redundancy. The company adopted a fair and reasonable matrix in considering which jobs were to become redundant. Therefore the Tribunal finds that the claimant was not unfairly dismissed and the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

The claim under the Redundancy Payments Acts, 1967 to 2007 succeeds but it is common case that the claimant already received his statutory entitlement and therefore the Tribunal makes no award under the Redundancy Payments Acts, 1967 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

