

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE *-claimant*

UD564/2011
MN604/2011

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 L. Ó Catháin

Members: Mr J. Hennessy
Mr F. Dorgan

heard this claim at Waterford on 29th November 2012

Representation:

Claimant:

Respondent:

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, was withdrawn at the outset of the hearing.

Background:

The respondent is a subsidiary company which sells kitchens at a number of branches throughout the country. The claimant was employed as a warehouse operative within the Waterford branch. It was the claimant's contention that his position was unfairly selected for redundancy.

Preliminary Issue:

Representation for the respondent submitted that the Tribunal did not have jurisdiction to hear the claim as the requirement of S.8 (1) of the Act was not satisfied due to the fact that the claimant's representation signed the T1A form. The form should have been signed by the claimant in order to be a valid claim.

Representation for the claimant submitted that the Act does not include a provision stating that the claim form must be signed by the employee specifically, therefore the Tribunal had jurisdiction to hear the claim. The claimant expressly asked his representative to bring the claim on his behalf and a copy of the claimant's signed instructions was submitted to the Tribunal.

Determination on Preliminary Issue:

The Tribunal considered the positions of both parties in relation to the preliminary issue. When the hearing resumed the parties were informed that the Tribunal had determined that the claim was properly before the Tribunal and that it had jurisdiction to hear the claim.

Summary of evidence:

The Waterford store, within which the claimant was employed, opened in 2008. However, the subsequent sales figures were far less than the forecasted figures. The Waterford branch suffered poor sales figures in 2009, 2010 and 2011 and indeed throughout 2012.

The General Manager for the branches nationwide gave evidence to the Tribunal. He explained that the Waterford branch comprised of a trade counter area, warehouse area and the drawings section which was a tailored specific role.

By October 2010, when the claimant's position was selected for redundancy the hope was that in closing the warehouse in the Waterford branch, it would help to improve the profitability of the branch. The closure of the warehouse was a last resort after attempting to reduce costs and re-negotiate overheads. However, the closure of the warehouse made little or no difference. Indeed the week prior to the hearing the staff of the Waterford branch was informed that the branch would be closing fully in January 2013.

With the closure of the warehouse in October 2010, the three positions in that area were made redundant, including the claimant's. One salesperson was also made redundant and his position was selected using a matrix. There were a total of 11 redundancies across the company and 1200 across the umbrella group.

Giving evidence the General Manager stated that the redundancies were implemented in a very structured manner. On the 13th October 2010 staff members were called in groups of three to a meeting and informed of the decline in sales, that the branch was operating at a loss and that the company now found itself in the position of having to implement redundancies.

Staff were informed that the company would accept an application for voluntary redundancy or a career break with a return to continuous service. The company was also willing to consider re-deployment options to other branches but there was little available at that time. The staff were informed that a further meeting would follow on 15th October 2010. The General Manager acknowledged in evidence that this was a short timeframe but stated it was critical. During cross-examination he accepted that staff were not given details on the 13th October as to what areas of the business might be affected by redundancies

As part of the individual meetings on Friday, 15th October 2010 the General Manager met with

the claimant and informed him that the warehouse was closing with immediate effect and that consequently his position was redundant. There was a retail sales position available in Limerick and this was offered to the claimant but he declined this position due to family commitments. On several occasions the General Manager informed the claimant that he had the right to appeal but the claimant signed the RP50 and accepted the redundancy cheque. The claimant received an ex-gratia payment. It was the claimant's evidence that he was shocked to be informed that his position was redundancy as the warehouse was not mentioned during the meetings that took place on the 13th October 2010. The claimant stated that he did not appeal the decision to make his position redundant as he did not believe that management would reverse their decision to make his position redundant. During cross-examination the General Manager confirmed that the group has a written redundancy procedure and although this was not shown to the claimant, the policy was adhered to. There was no need to compile a matrix in relation to the warehouse staff as the warehouse was closing fully.

Another employee DP was retained in order to complete a "Smartfit" order. He was retained until this project was completed and then his position was made redundant in December 2010. The General Manager did not believe the claimant had the required skill to carry out this work as he was not a qualified carpenter. Employee N was retained in sales as it was important that he continue to bring sales to the branch.

During cross-examination the General Manager was asked to produce evidence of the financial figures for the Waterford branch. Representation for the respondent stated that such figures were not public knowledge as the accounts formed part of the umbrella group and were not published individually.

It was put to the General Manager that the warehouse has in fact been in use since October 2010. He replied that from time to time a few products have been sold from the warehouse area but any such sales are minimal and for small items such as door hinges. Any such sales are managed by the tradespeople but all other orders issue from a Dublin branch.

It was put to the General Manager that Employee N who worked in the showroom was later trained to work in the warehouse after the claimant's position was made redundant. The General Manager refuted this stating that Employee N works at the trade counter.

In reply to questions from the Tribunal, the General Manager outlined the financial losses suffered by the Waterford branch from 2008 to the current year.

It was the claimant's evidence that there were times when he was involved in heated debates with the branch manager. The claimant received one verbal warning following the invoking of the disciplinary procedures for an error he made.

The claimant outlined the movement of staff within the Waterford branch to the Tribunal. During the claimant's employment a fellow colleague moved to the trade counter. On a number of occasions during his employment the claimant enquired about transferring from the warehouse area. He displayed an interest in working on the trade counter but his requests in this regard were refused by the Branch Manager, even though the claimant believed he had the ability to sell the products. The claimant at another time expected that he might be promoted to the position of warehouse manager but this position was given to another individual. The claimant felt there was a personal issue between himself and the Branch Manager and that he did not want him working in the branch.

When the claimant's position was made redundant he understood that the warehouse was shutting fully and that any future orders would be sent from another branch. However, the claimant stated that to the best of his knowledge the warehouse did not in fact close immediately and that there are still employees working in the warehouse, as the employees from the trade counter also work in the warehouse section. The claimant cannot understand how employees with lesser service were retained as he could have claimant could have been trained in most of the positions. During cross-examination he accepted that he could not have carried out the work that DP did from October to December 2010.

The claimant gave evidence of loss and efforts to mitigate the loss.

Determination:

Whilst the Tribunal accepts that the company was suffering losses this was not supported by adducing written documentation. The Tribunal finds that the procedures applied by the company were completely deficient in the manner of the implementation of the claimant's redundancy. Accordingly, the Tribunal awards the claimant compensation of €8,000 under the Unfair Dismissals Acts, 1977 to 2007, with the redundancy sum already paid to the claimant to be offset against this award.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)