

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE ,

CASE NO.
UD841/2011

against

EMPLOYER
under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K.T. O'Mahony BL

Members: Mr. J. Browne
Mr. F. Dorgan

heard this claim in Kilkenny on 13 February 2013 and in Dublin on 30 April 2013

Representation:

Claimant(s):

Respondent(s):

The determination of the Tribunal was as follows:-

Summary of Evidence

The claimant commenced employment as shop manager in the respondent's clothes shop in town L (TL) on 11 September 2006. The claimant also undertook the role of buyer for the shop, which involved travel to Dublin almost on a weekly basis. The respondent also owned clothes shops in a number of other towns. In late 2009 the pay of all managers was reduced by 20%.

Due to a serious health condition, which required surgery, the claimant was absent from work from June 2010. The respondent employed TM in the shop during the claimant's absence. It was TM's evidence that the respondent took her on as a temporary replacement manager to take over the management of the shop (except for the buying function) during the claimant's absence. The respondent's position was that TM had been taken on as a sales assistant.

In December 2010 the claimant indicated to the respondent's bookkeeper that she would be resuming work on Saturday, 18 December. In a telephone conversation with the respondent a few days before her intended return the respondent enquired as to whether she had received his letter, which he had sent by registered post. Although this letter was dated mid-November 2010, she only received it later that day (mid-December). In the letter the respondent informed the claimant that due to the deteriorating economic climate and downturn in the business, he was restructuring his business, was unable to take her back in her previous position and asked her to manage a shop in another town (AT) and become buyer for three shops. In the letter he also indicated that her wages would be reduced, but did not specify the amount of the reduction. AT was around 80 miles away from TL.

The claimant sought a meeting with the respondent to discuss the contents of his letter and they met in a local hotel the day before the claimant was due to resume work. There is a conflict of evidence as to what transpired at that meeting. The respondent's position was that there was a sharp decline in the trade in the shop in TL and he could not maintain the position of manager cum buyer there. The claimant turned down his offer of suitable alternative employment in his shop in AT and he then offered her redundancy.

The claimant's position was that the respondent told her that things had changed since he had written to her, that he had decided to make all his managers redundant and that she was being made redundant with immediate effect. The position in his shop in AT was neither offered to her nor was she given an opportunity to discuss it. She was not given the criteria used to select her for redundancy. Her trust in the respondent was destroyed. She would have accepted the job in AT. She had a mortgage and her daughter, who had started university in Cork, is financially dependent on her. She was 'extremely low' after her illness and more so after the loss of her job, which she found devastating.

TM's evidence was that after Christmas the respondent told her that the previous manager (the claimant) was not returning and he offered her the position of manager of the shop, which entailed the usual managerial duties but did not include the buying function. Her pay remained the same. The respondent reiterated that TM was a sales assistant. He offered her the position the week after the claimant had turned down his offer to her. This was the first time there was a redundancy situation in the business and there were no redundancy procedures in place.

Determination:

The Tribunal accepts the claimant's evidence that, at the meeting on 17 December, she was told that she was being made redundant and was neither offered the job in the respondent's shop in AT or given the opportunity to discuss it. Whilst the duties attaching to the claimant's position in the shop in TL had changed to the extent that the buying function no longer was part of that position, the major part of that position, that of managing the shop, still existed. The Tribunal finds that in either or both of these situations the dismissal was unfair. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds. The Tribunal considers compensation to be the most appropriate remedy in the circumstances of the case. Under section 7 of the Unfair Dismissals Acts compensation awarded by the Tribunal cannot exceed the amount of 104 weeks remuneration in respect of the employment from which the claimant was dismissed and is "*in respect of any financial loss incurred by [the claimant] and attributable to the dismissal as is just and equitable having regard to all the circumstances*". The Tribunal deems it just and equitable to award the claimant compensation in the sum of €40,000.00 (forty thousand euro) under the said Acts.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

