

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

against

Employer

under

CASE NO.

RP206/2006

UD437/2006

MN272/2006

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001 REDUNDANCY PAYMENTS ACTS, 1967 TO 2003 UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath BL

Members: Mr. P. Bracken
Mr D. Mahon

heard this claim at Dublin on 19th September 2006
and 12th December 2006

Representation:

Claimant(s): Murphy & Evans, Solicitors, Unit 13a Main Street, Ongar Village, Dublin 15

Respondent(s) Ms. Kealin Ireland, Ireland Human Resources, Eglinton Cottages, Tivoli Road,
Dunlaoghaire, Co. Dublin

The evidence adduced may be summarised as follows:-

Respondent's Case

The financial controller of the respondent company told the Tribunal that he joined the company in January 2003. The company had thirteen outlets and employed one hundred and seventy four staff in total. The claimant was employed as a cashier in 1991 and in 1995 she resigned and she joined an Garda Siochana. On occasion she may have been asked to undertake cashier duties. In 2001 the claimant commenced work in the respondent company as the chief cashier. A few weeks after the financial controller commenced he became aware that the accounting system was outdated and he had to make it more efficient. Pressure was put on existing staff to maintain the accounting system.

At that point the company had a growth of 15% per annum and there was no increase in growth in the accounts department. He hoped that new technology would offset the situation. A member of

staff XXXX was employed for thirteen years and she dealt with ledger control and goods and invoices. XXXX was employed for nine years and she held a similar role. These two undertook similar work, and had no formal qualifications other than work experience. The claimant undertook work in cash receipts and this was totalled every day. Cash was lodged in the bank. When the financial controller commenced he produced branch accounts for each location and he had to change the technology, and it meant that production would increase. The system was updated which eliminated the totting of the spreadsheet. In 2004 the claimant was chief cashier, she undertook spot check and she checked key objectives in each store. The claimant arrived at the shops unannounced. The claimant checked with the manager of the shop and gave the results to the financial controller. This was not 100% of her job. In January to February 2005 he spoke to the claimant about additional work. The board of directors requested monthly management accounts instead of quarterly accounts. Part of the process entailed moving work around and he spoke to the claimant about this. He redeployed the work in the department and created a full time job for the claimant. He spoke with the claimant over three months from May it was agreed that the claimant would take up a position and six areas were identified. The claimant had a new role. He spoke to the claimant about training support mechanics, she was happy to train on how to recognise suppliers invoice and how filing should work. She received intensive training for the first week case by case. If the financial controller and the claimant were not able to resolve a problem other staff helped out. The claimant was familiar with suppliers and shops. The claimant did a great job in June, July and in August she was a bit behind in some cases but he had confidence in the claimant. At the end of August the claimant was on holidays and when she returned there was a backlog of work. The backlog was not dealt with to his satisfaction. One to two transactions was completed out of two hundred. The claimant told him that she needed more training. He agreed to do additional training in September. He identified a schedule, received thirty five to forty invoices and four were disputed. He was confident that the claimant could undertake the job as she had done so since June. On Tuesday at 9.15a.m. The claimant appeared unhappy, she said she could not do this work and she left the building. He drew up a time management schedule for her and the reason for this was to help her manage her time and set herself targets. They were just about to start, she had her PC open, and she said that she had enough. The financial controller was embarrassed and he went to his office, he then went to the HR manager and explained the situation.

The claimant was absent on sick leave for two weeks. She came back and he sat down along with HR manager. He still had confidence in the claimant. She stated that she did not want to do this job and the HR manager asked her to think about it for a couple of days. Next day he had another meeting with the HR manager. The claimant again said that she did not want to do the job and the financial controller did not know what to do. He said he would look into it and consider the options. Work did not continue and there was a huge backlog in October. Invoices were not processed. The claimant stopped carrying out work, and it took her one and a half days a week to undertake invoices. The claimant undertook cash receipts and payroll. The first two parts of job took over three days a week. In October the HR manager went to the claimant and identified a number of options to the claimant.

The HR manager sent a letter to the claimant on 26 October 2005 in which he identified two options for the claimant, to move into the role of cashier floating from store to store with a decrease in salary or option B that was redundancy. After the letter issued to the claimant the HR manager met with the claimant and the claimant agreed to accept her redundancy and work her notice. The claimant received €6,444.00 plus an ex gratia sum of €3,866.00. The claimant was also furnished with a reference. He again reiterated that the claimant had stated that she did not want to do the job and the work methods had changed so much. In September 2005 a considerable number of changes took place. The cash receipts were now eliminated and the claimant's role was

gone. The company has opened three new shops this year and the company has to be able to respond to changes. The claimant received her P45, P60 and redundancy, which she signed.

In cross examination the witness stated that as head cashier the claimant was responsible for training cashiers and undertaking spot checks one day a week. It was agreed how the claimant would visit and the cashier could have one new cashier to train every three weeks. He agreed that the claimant dealt with substantial amounts of money. Petty cash took one hour a week to complete. It could take time to train and the position he was training was very repetitive. In June 2003 he prepared branch accounts and in May 2005 the board requested monthly accounts. The board accounts did not increase the workload and producing accounts for each branch had nothing to do with the claimant. The claimant prepared cash receipts. Regarding the pay for cash receipts she inputted them branch by branch. When the witness was not around the claimant would have asked Pamela. He provided intensive training for the claimant and this he undertook in small blocks, training took place over three to four days for an hour each day. The claimant had six suppliers and the witness felt that the training, which the claimant received, was adequate.

When asked if the claimant expressed disquiet regarding the training situation he responded that she may have raised some questions regarding his availability. He had his own work to undertake and he had to fit her in. The training took place at the claimant's desk in an open plan area and telephone calls were not taken during the training unless personal calls. A considerable amount of training was undertaken. The nature of the claimant's concerns was her ability to undertake the job. They had several meetings over two months and explained how the role would work. When asked that the claimant was expected to manage six supplier accounts at the same time he responded about an hour to an hour and a half per week on average. He could not recall if the claimant indicated that there was a backlog regarding receipts for June, July and August. In September when she returned from holidays he had to undertake the cash receipts. While the claimant was on holiday he undertook the payroll. If she took a week off he completed the payroll. He became aware that the claimant had real concerns when the claimant walked out. He undertook payroll and cash management in September and the ledger was not backlogged, cash receipts were backlogged. He undertook payroll when she was away

In September he worked on August invoices. In September if he became aware of invoices in July would be concerned, he had very special relationship with suppliers. If the company paid on time it could get further discount. He asked the claimant when she returned from holidays if she was happy with that part of the job and the claimant did not say that she did not want to do the job.

Claimant's Case

On the second day of the hearing the claimant gave evidence. She explained that she had commenced employment with the respondent in October 1991 and worked as a cashier. She left full-time employment in October 1992 to join the Civil Service but continued on a part-time basis. In December 2000 she was approached by the respondent's management and asked to rejoin the company on a full-time basis in the office.

She rejoined in January 2001. Her role was to monitor lodgements, oversee petty cash, purchase stationery, payroll administration, training and other duties required of a chief cashier. She dealt with ten branches of the company, the warehouse and head office. She explained that she dealt with over one hundred and fifty staff and organised their wages. Salaries could change, commissions had to be calculated for sales staff and overtime calculated. She said that she was kept very busy.

In February 2005 the financial controller of the company approached her. He told her there would be a re-organisation of the accounting department. He wanted her to take on an accounting role and takeover six of their biggest suppliers, maintaining invoices and G.R.N.'s (goods received notes) and making sure the suppliers were paid correctly for goods purchased. All these details were to be kept on a new computer system that the claimant was to be trained in. She told him that she had sufficient work to do but he felt that she would be quite capable. She was also informed that new technology was to be installed which would change the payroll system and daily lodgements.

By June 2005 the claimant said that the financial controller kept asking her if she had enough work to do. They had a couple of meetings. She met with the HR manager and told him that she felt pressurised, but when asked if she would give it a try, she replied yes. There were two staff who could train the claimant in on the new system and it was agreed that one of these staff and the financial controller would train her in. However, it transpired that only the financial controller trained her when he had time and when queries were raised during her training he would have to consult on of the other staff in accounts.

Having seen an advertisement for a night course in the computer package she was training in, she asked the financial controller if the respondent company would agree to pay for it, which they did. She commenced training in September 2005. Having returned from a weeks leave she found lodgements piling up on her desk. The financial controller told her to put them in her drawer, as "it didn't look good". Invoices for August had not been imputed. The payments for June, July and August invoices were sent out to the suppliers but the accounts had not been reconciled. She was also still working on the payroll system and reconciling the daily lodgements at this time. Two new branches were to open which meant a lot of organising. Stationery had to be purchased; new cash registers had to be put in place and staff had to be trained. The claimant said that she was under a lot of pressure and could only give a half-day of the two days training required to the new staff. The following week she was informed that she had a further three new staff to train and the financial controller wanted the accounts finalised. She again went to see the HR manager and told him what was going on. He told her that the accounts could wait and she was to concentrate on training the new staff.

In early October 2005 the claimant said that she was informed that she would receive an hour's training a day. On the third morning she had to inform the financial controller that she was to train new staff at 10 a.m. She left. She explained that at this time she was unwell and attended her doctor who certified her medically unwell for a week. When she came out of the doctors, she noticed several missed calls from the HR department. She returned the calls and asked could the Mr. P be informed that she would be out for a week.

She returned on Thursday October 13th 2005 to find that the wages had not been compiled. There was also a note from the financial controller saying that the accounts also had to be completed. She paid everyone a basic wage that week. She was called to HR and told, by the HR manager, that she should not have left the premises and should have told someone. She said she had spoken to someone in HR and was told not to let it happen again. She had a similar conversation with the HR manager and was told that they were a team and if one person let them down, that was it. She was told she would be given a new work plan and to have a think about it. She said that she could not do the accounts and was called to the HR manager's office. He informed her that she had two choices. She could become a floating cashier with a reduction in salary of €11,000 per year or she could take redundancy. She asked for the offer in writing and received it on October 26th 2005. She decided two days later that she had no choice but to leave. She was given notice for November

14th 2005 but she asked the HR manager could she leave on November 4th 2005. Following a call to management, it was agreed. On November 2nd 2005 the financial controller asked for her passwords and update of her work. She compiled her own P45 and wages for the staff. When she arrived for work the following day her desk was clear. She left.

The claimant said that she was unemployed for two weeks and acquired a temporary contract for two months on a much lower salary. She acquired full-time work in March 2006 but at a reduction in salary of €2,500 a year. She also lost her pension when leaving the respondent and an incentive bonus of €500 quarterly.

On cross-examination she agreed that the contract of employment she had signed had stated that she was to “be flexible”. She said that she had taken on any work given to her but could not do everything. When asked the claimant said that there had only been one or two occasions that she had to be spoken to concerning her time keeping. When put to her she agreed that in February 2005 she had mentioned working a four day week as new technology was to be introduced to alleviate her workload.

The claimant said that she did not feel that the training she had received by the financial controller had been adequate. She agreed that the financial controller had told her that he had regarded her able for the role. She said that she had asked if some one else could do the job but was told “no, only you”. She explained that there were fourteen people in the office and all were capable.

When asked she said that the work plan compiled would have been reasonable for a trained person. The claimant said that she felt she had been unfairly treated.

The Tribunal Determination:-

The Tribunal has carefully considered the two days of evidence heard in connection with this case. The Tribunal is mindful of the fact that the financial controller came into XXXX. with an agenda of having to rationalise the workplace. Against this backdrop he required the claimant to take on a new role, which he felt was well within her capabilities. Having listened to the evidence, the Tribunal agrees that this work was not beyond the claimant’s ability. This became an issue of whether the claimant would have adequate time and training to carry out the functions required of her.

The Tribunal is of the view that the training was inadequate. The Tribunal heard evidence to the effect that even the cashiers would be expected to have two full days training before being put on the floor. The claimant was expected to learn these new procedures in the course of her regular working day as and when the financial controller could spare an hour and sit down and train her. It is clear that the financial controller’s own proficiency may not have been adequate.

Even if the training had continued in this manner, the second difficulty faced by the claimant was a lack of time theretofore her workload had filled her week. There was a promise that new technology being introduced would give her more time to turn her attention to this new task. However, between commencing training and her departure date it seems that the claimant’s working week had not been “freed up” by the introduction of new, fast and efficient technology.

The Tribunal denotes a conflict at management level about what the claimant’s function would be – the HR management expected training of cashiers to take precedence over reconciling invoices with G.R.N.’s. This made the claimant’s job even more difficult.

The claimant could not continue. She made her difficulties absolutely clear. The company was not prepared to comprise. There would be no further training of any consequence, and she could only go forward if she was prepared to take on all the tasks expected of her. This was unacceptable to the claimant.

At this stage it seems the company had little use for the claimant and she was invited to choose between redeployment at a significantly reduced salary or take redundancy.

The Tribunal finds there was no legitimate redundancy situation and that effectively the company was effecting a dismissal and was dressing it up as a redundancy. In the circumstances the Tribunal finds that the company unfairly dismissed the claimant by reason of unfair and inappropriate selection for redundancy.

The Tribunal notes a “redundancy” package has been paid. This sum must now be seen as part of the compensation, which the Tribunal awards the claimant under the Unfair Dismissals Acts, 1977 to 2001.

Bearing in mind the lost bonus, the short time out of work and the reduction in salary moving forward, the Tribunal awards the sum of €13,000 under the Unfair Dismissals Acts, 1977 to 2001 of which a substantial portion has already been paid. The balance of €4,222 is payable by the respondent which includes the award of €1,500 under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)