

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
Employee

CASE NO.  
UD208/2006  
RP84/2006  
MN120/2006

against

Employer

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. K. T. O'Mahony B.L.

Members: Ms M. Sweeney

Mr. K. O'Connor

heard this claim at Tralee on 16th April 2007

#### Representation:

Claimant: Mr. Pdraig O'Connell, Pdraig J. O'Connell,  
Solicitors, Glebe Lane, Killarney, Co. Kerry

Respondent: Mr. Pdraig Burke, Burke & Company,  
Solicitors, 61/62 New Street, Killarney, Co. Kerry

The determination of the Tribunal was as follows:

The respondent owns a retail tile store in Kerry. One of the co-directors (hereinafter The Director) managed the business. In November 2003 the respondent employed the claimant as an administrator. In June 2004 the Director promoted the claimant to the position of Sales Manager and gave her a salary increase. At Christmas 2004 she was provided with a company car. Promoting the claimant enabled the Director to spend less time on the sales floor and to concentrate his efforts on expanding the business. The respondent opened a bath and a wooden-floor centre in Kerry and another showroom in Cork. In November 2005 he employed an administrator. It was the claimant's evidence that despite her promotion to sales she also continued to do the administrative work until sometime in 2005. The claimant was an excellent employee and was successful in sales. The Cork showroom became a drain on the respondent and finances became "tight". The claimant was given a €5,000 Christmas bonus in 2005. It was after this that the Director became aware of the extent of the financial problems. In January 2006 the claimant had a problem with her pregnancy and the Director had been informed of this. The claimant returned to

work on 23 January 2006.

Due to the financial state of the company the Director took the decision that he would revert to sales on full-time basis. As the business could not financially support two sales people he decided to make the claimant's position redundant. On 30 January 2006 he communicated his decision to the claimant. He offered her the options of reverting to her previous position in the office at her previous salary or to work in the Cork showroom and retain her car and salary; furthermore, the Cork showroom would open later to allow for travelling time to Cork. The claimant considered the options to be totally unacceptable and declined to accept either of them. On 31 January the Director told the claimant that he would have to make her redundant. The Director took over the sales position immediately. The claimant was paid until 28 February 2006.

**Determination:**

The Tribunal is satisfied that the dismissal was not related to the Claimant's pregnancy. The Tribunal is further satisfied that a redundancy situation existed in the respondent's business. It is further satisfied that it was the claimant's position that was redundant. The respondent offered the claimant the options of reverting to her former position or of working in the Cork showroom. In the circumstances, the Tribunal finds that the claimant was not unfairly selected for redundancy and that the dismissal was fair. Accordingly the claim under the Unfair Dismissals Acts, 1977 to 2001, fails.

As the claimant received her full entitlement under the Minimum Notice and Terms of Employment Acts, 1973 to 2001, the claim under these Acts is dismissed.

It was reasonable for the claimant to refuse both alternative positions offered to her. Accordingly, the claim under the Redundancy Payments, Acts, 1977 to 2003 succeeds. The Tribunal awards the claimant a statutory redundancy lump sum payment based on her continuous service and the following information:

Date of Birth:	08 February 1973
Date of Commencement:	03 November 2003
Date of Termination:	28 February 2006
Gross weekly pay:	€874.25

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)