

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD343/2007

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Sheedy

Members: Mr. J. Redmond
Dr. A. Clune

heard this claim at Ennis on 8th November 2007

Representation:

Claimant: Mr. Mark Murphy Solicitor, Mark Murphy & Co. Solicitors,
99 O'Connell Street Limerick

Respondent: Ms. Sheila Lynch, Cashin & Associates, Solicitors,
3 Francis Street, Ennis, Co. Clare

The determination of the Tribunal was as follows:

Respondent's case:

The respondent is a voluntary organisation set up to provide support to the women of Co. Clare. It evolved from women's groups in 1992 and is funded by the Department of Community, Rural Affairs and the Gaelteacht. The claimant was involved in the organisation from its inception. She initially did voluntary work for the organisation and was first on the payroll in 1999 for about two to three hours per week. This increased over the years to 15 hours per week in 2002. At this point she was one of three part-time workers sharing the running of the organisation. In 2002 the claimant's job description was formalised. Her job title was office manager/project administrator. It was mainly administrative work with some co-ordinating responsibilities.

In 2005 a review of the work and structures of the organisation took place in consultation with the staff. During this review and the restructuring which followed it, the voluntary management committee of the organisation was supported by the Community Development Support Agency. The organisation applied for and got additional funding for additional hours for a co-ordinator role. As a result of the

review and additional funding the organisation decided it needed to restructure the staff to one full-time co-ordinator and one part-time administrator. The co-ordinator would have PR responsibilities; co-ordinate the work of, and service, the management committee but would be responsible for and oversee work plans. The part-time administrator would have no co-ordinating functions, but would be responsible for accounts, reception duties, budgets and quarterly returns to the Department. This would be a part-time post at 15 hours per week. The claimant's existing job was to be made redundant. Around this time the two other part-time staff left the organisation and the claimant was the only remaining member of staff and was working around 20 hours a week.

The organisation wanted to bring the salary scales for the jobs into line with scales recommended by the funding Department. The claimant was earning a higher rate than the top of the scale for administrator on these scales. The management committee agreed to extend the salary scale to incorporate the claimant's salary and offered her the job of part-time administrator on 15 hours per week. The claimant was also to be invited to apply for the position of full-time co-ordinator. On 16th August 2006 several members of the management team met with the claimant and made these proposals to her. They explained to her that her hourly rate would remain as it was at €18.50 per hour if she accepted the post of administrator. She was invited to apply for the job of full-time co-ordinator. The claimant was not happy to take a cut of 5 hours pay per week. The management committee asked her to come back to them. On 22nd September 2006 the management committee offered the claimant either the equivalent of six months loss of salary for the hours she would be losing if she took up the position of administrator or, alternatively, redundancy from the position of office manager for 12 years at 20 hours per week (although she had only been on the payroll since 1999). The claimant had her trade union representative with her at the meeting when this offer was made. The claimant left the meeting with her union representative. Her union representative later came back to the meeting to say that the claimant needed time and would come back to the committee in two weeks.

On the 10th October 2006 the claimant sent an email to the management committee to say she would accept redundancy. Her job was initially to terminate in December but the management committee asked her to stay until January in order to complete the accounts. The claimant's final day in the job was 25th January 2007. She was paid €10,000 in redundancy payment. An exit interview was conducted with the claimant. The respondent's record of this interview is not contemporaneous as the original record was lost. The claimant did not apply for the position of full-time co-ordinator. This post was filled in January 2007. The position of part-time administrator for 17.5 hours per week was eventually advertised at a lower hourly rate than the claimant had been getting. 17.5 hours per week was the norm for administrator jobs in community development organisations; it had been offered at 15 hours to the claimant merely to keep her hourly rate of pay as it was. The claimant applied for the position of part-time administrator but, although she was short-listed and interviewed, she did not get the job. There was a high standard of applicants for this job, but one, CB, was clearly ahead of the others and was offered the job. CB had previously been a member of the voluntary management committee but had resigned prior to applying for the post of administrator. She took the job but has subsequently left the organisation. Witness SOG for the respondent did

not respond in the negative to the suggestion that the organisation had got rid of the claimant in order to get someone more junior with a lower rate of pay.

Witness MC from the Community Development support agency was satisfied that interviews were conducted fairly. MC was clear that she never had any indication from the voluntary management committee that anyone wanted to get rid of the claimant. She did not question that, as office manager, the claimant had been the heart of the organisation.

Witness ON gave evidence that an allegation of bullying had been made by the claimant in 2004. This was referred to the staff liaison support group who asked the claimant to put the allegation in writing. The claimant did not want to do this and, when asked to, she withdrew her allegation formally in writing. At the claimant's exit interview she said she was sorry she hadn't taken this allegation of bullying further. At a management committee meeting of 23rd June 2005 the claimant had walked out because of the way she was been spoken to and later sent an email with her concerns. ON agreed that one of the management committee had spoken to the claimant in an unacceptable way and that it was bullying. The claimant later met informally with the person who she had the issue with and tried to sort it out informally. The management committee worked hard to put mechanisms in place to ensure that acceptable ways of interacting were agreed. A Group Contract and a Grievance Procedure were put in place. At the exit meeting the claimant did not say she was leaving because of bullying. She said she was not happy with the way the organisation was going and that she felt that there was manipulation of the management committee against her. ON did not agree that when the claimant was earlier asked to attend supervision meetings with the staff liaison group that she was being singled out for criticism. She did not agree that there was unrest amongst the staff of the organisation. She did not agree that she had stormed out of a meeting with staff; she had left to collect her daughter from school.

Claimant's case:

The Tribunal heard evidence from the Claimant. Her work consisted of co-ordinating the network, service and events. Organising events, meeting other groups, dealing with the public and a "drop-in" service. She did some accounts work, day-to-day expenses, creating and publishing leaflets and newsletters. She also dealt with funding from government departments. She invoiced the Respondent for any work that she did outside of the office.

In 2006 she was called in to a meeting with the members of the volunteer management team. At around this time the Respondent had just received funding from a government department for a full time co-ordinator post.

The management team (LP & AMF) told her that her hours were to be reduced by five hours and that she could think about it for a week. She immediately told them that she was unhappy about this.

The Claimant told the Tribunal that the service and events co-ordinator had resigned a few months prior to this and that there were more hours available.

The management team told her that they needed more money to pay the co-ordinator post and vaguely mentioned about salary scales. The management suggested that she obtain advice. The Claimant did not think it made sense. She had worked there for twelve years and she knew the work very well. She knew that if a co-ordinator arrived that there would be enough work for them both. She felt that the situation was concocted to get rid of her and to get a junior worker on half of her wages. She felt that this “came out of the blue” and five hours consisted of a quarter of her hours. The day after the meeting she wrote a letter of objection.

She obtained advice from her trade union. The management put two options to her: to accept working fifteen hours per week or to accept a redundancy package. She felt that there were very few options. She was stressed and her family advised her to work somewhere she was appreciated. She worked up until January 2007 to finish the accounts.

She attended an exit interview with MS and ON. At the interview she told them that her job was undervalued and that there was a lack of support staff. She also said that there was staff dissatisfaction and that the ethos changed. She told them that she was sorry that she had not pursued the bullying charge that she was going to pursue. She then left the interview.

Circa eleven days after she had left she saw an advert for a project administrator for the Respondent. The job was advertised for a seventeen and half hour week and the Respondent had wanted her to work a fifteen-hour week. Also, she had actually been working twenty hours per week. The job description duties on the advert were the duties she had been doing for twelve years.

Regarding another position that was available in the Respondent company the Claimant told the Tribunal that she was encouraged to apply for the job by AG and the new co-ordinator ED also encouraged her. She filled in an application form and was called to an interview. There was one interview, which went well. She felt that she was being interviewed for her (previous) own job. Another person, CB, who had encouraged the Claimant to apply for the post also applied for the post. One of the interview panel members phoned her a day later to let her know that she was not successful. CB was successful in obtaining the post.

The Tribunal heard evidence as to the Claimant’s loss.

The Tribunal heard evidence from a former member of the management committee. She explained that she received a phone call from ON to say that they were going to offer the Claimant a reduction of five hours of work. She felt that it should be discussed further but was told that there was not the time to discuss the matter. She resigned from her post. She felt that there was a lot of tension and because of this and that the Claimant had a lot of experience with the work that it would be easier for AMF if the Claimant were not there.

Determination:

The Tribunal are unanimous that the Claimant was unfairly dismissed. The claim under the Unfair Dismissals Acts, 1977 to 2001, succeeds. The Tribunal awards the Claimant the sum of €20,400-00, having taken into account that she was paid a redundancy lump sum.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)