

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD785/2007

against

Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. L. Ó Catháin

Members: Mr. M. Forde  
Mr. J. McDonnell

heard this claim at Cork on 17th April 2008, and 23 June 2008

Representation:

Claimant: Ms. Linda Lyons, Patrick J. O'Shea & Co. Solicitors, 77 Main Street, Midleton,  
Co. Cork

Respondents: Mr. Pat Barriscale, of Holmes O'Malley Sexton, Solicitors, Bishopsgate,  
Henry Street, Limerick

The determination of the Tribunal was as follows:

#### **Claimant's Case**

She started work for the respondent in January 2003 at the Galway Branch. She set up the office when a Branch opened in Cork in January 2004. At that time she worked full time. In August 2005 with the agreement of her manager she started working part-time. This arrangement was to last for 6 months. She continued to do the same work as before, she could do all the tasks in the office. Her position remained unchanged in July 2006. In August 2006 a new marketing manager joined the company, with the assignment to increase sales. The new marketing manager wanted to have 2 full time administrative staff in each of the three Branches. At this time the claimant worked in the office with a full time vehicle administrator. In January 2007 an administrator was recruited to deal with the buying company.

The marketing manager wanted her to work full time. She never refused to work full time. One of the directors suggested that she find another job, they would keep her on while she looked for a job and would then make her redundant. She received a letter dated 26<sup>th</sup> April 2007 offering her a full

time position. However the offer was not acceptable to her as it contained a provision for 4 months probation also the pay offered was less than the hourly rate she was paid while working part time. She received a revised offer letter dated 21 May 2007, however she still felt the pay offered was lower than the hourly rate she was on.

The marketing manager raised allegations of taking excessive sick leave, taking too much annual leave and of bullying against her. The allegations were later withdrawn. She was called to a meeting on 18<sup>th</sup> June 2007, without being given time to arrange for someone to come with her. Her redundancy letter and cheque were on the desk. She had applied for several jobs but so far has not obtained another job.

### **Claimant's closing submission:**

The claimant did not feel that the job offered to her was genuine, so it was not a case of redundancy, but one of unfair dismissal.

### **Respondent's case:**

The Financial Controller (C O'B) gave evidence that he worked for the company since July 2006. He said that they were based in Castlebar, but that the Cork branch also came under his sphere. A review of the company was carried out in 2006/2007, and restructuring began in July/August 2006. He said that the claimant worked a three-day week at this time, Monday to Wednesday. Turnover and sales increased substantially, leading to a bigger workload on existing staff, only two employees were employed in the Cork branch, the claimant and RB. Due to a shortfall in resources, other branches had at least two full-time staff but Cork only one (RB). At the end of 2006, the claimant was asked to accept a full-time role as Manager. She said she was interested in the position but, after a discussion with her husband, she said that she couldn't work full-time. So the company had to advertise externally, and TC was employed in December 2006. A further discussion was held with the claimant in 2007, and she was offered a full-time role as Administration Manager, but she said she couldn't take a five-day position. The terms were altered by dropping the probation requirement, and offering her an increase in salary, but she still refused. An e-mail from her said "you can offer me redundancy". On 18 June 2007 she was made redundant and a cheque was issued, but she never cashed it. A third employee has since begun working in the Cork branch. RB is handling the buying company.

He said that RB was handling the buying company by September/October 2006, and not the claimant. The initial offer to the claimant was verbal, and did not give details regarding pay and conditions. They asked her to go full-time, but she said no. The problems in Cork were alleviated by the employment of TC but not completely resolved. Asked why the problems were not explained to the claimant, he said that he did not want to lumber her with these concerns, as she was doing her best within the three-day week schedule. He denied that there was any attempt to get rid of her. He agreed that TC had been trained in by the claimant. She requested a pay rise, but it was decided that this wasn't possible as her position was no longer tenable. He accepted that she made allegations of bullying. She declined the full-time job in her letter to GC on 25 May 2007, so on foot of that, redundancy was issued. He denied that the job offer was not a real one. He said that the reason she was left in her position for so long was to give her time to find a new job. She had been a good employee. Asked why he did not outline the details of the new job to her, he said that the main factor was the full-time issue, details could have followed, he was not sure if she knew what remuneration would have been offered to her, but that she was probably aware what terms RB had

been given.

The Purchasing Manager (RB) gave evidence that she started work in November 2005. She was trained in by the claimant. She began in the Cork branch of Auto X Change but the role changed to handling the business of the buying company around March 2006. She said that she also did the claimant 's work when she wasn't there. The volume of work increased in November/December 2006 and she had to devote more time to the buying company. She was aware of the job offer made to the claimant. She said she got an increase in pay, and a company car, around January 2007. She agreed that the claimant had helped her out from time to time, and vice-versa.

TC gave evidence that she joined the company in December 2006 as Administration Manager. It was a very busy office, and the claimant was involved in training her. She said that she did the claimant 's work when she wasn't there. She had no role in the buying company. There was pressure on staff to work longer hours to keep up with the increase in workload. She said that she got a company car in mid' 2007. She was aware that the claimant was upset on the day she was made redundant, but did not know why she was upset at the time.

**Determination:**

Having carefully considered all the evidence, the Tribunal found that the claimant did not reach the required level of proof to establish a constructive dismissal.

The Tribunal are also of the view that the claimant's position became redundant.

Therefore, the Tribunal finds that her claim under the Unfair Dismissals Acts, 1977 to 2001, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

