

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
Employee

CASE NO.
UD329/2008
MN301/2008

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. L. Ó Catháin

Members: Mr. M. Forde
Mr. K. O'Connor

heard these claims in Cork on 30 July 2008

Representation:

Claimant(s):

Mr. Denis Daly BL instructed by
Mr. David O'Connor, Solicitor,
High Street, Newmarket, Co. Cork

Respondent(s):

Ms. Margaret Lucey, Timothy Lucey & Company, Solicitors,
North Square, Macroom, Co. Cork

The determination of the Tribunal was as follows:-

The written claim to the Tribunal stated that the claimant's employment with the respondent had commenced in early 1999, that she had gone on maternity leave on 2 March 2007 and that the said leave was to expire on 2 August 2007. However, when she returned to her place of employment she was informed that, on grounds of redundancy, there was no job for her. She had received no prior notice of this and claimed that it was, in fact, an unfair dismissal.

The respondent's notice of appearance stated that the garage where the claimant had worked had

closed down shortly after the claimant went on maternity leave in March 2007 and that, when the claimant was ready to return to work in August 2007, the respondent had no position available and offered to make her redundant. Although the claimant refused redundancy payment she was sent her holiday pay and pay in lieu of notice.

At the beginning of the Tribunal hearing the respondent's representative submitted that the claimant's entitlement under the Minimum Notice and Terms of Employment Acts, 1973 to 2001, had been dealt with such that there could be no outstanding claim under the said legislation. The claimant's representative acknowledged this.

Giving sworn testimony, the claimant confirmed that her employment with the respondent had started in 1999 and that she had gone on maternity leave on 2 March 2007. She told the Tribunal that the said leave would end at start September 2007 but that on 2 August 2007 she went back to the respondent's managing director (hereafter referred to as MD) and told him that she would be back at start September whereupon he told her that he had no job for her.

The claimant told the Tribunal that, when she had taken maternity leave, MD had told her that there would be a job for her in another company (hereafter referred to as LT) when she came back. She further told the Tribunal that she had also done work in the office of LT and that LT had not closed down. She had known that the respondent was closing but MD had offered her a job in LT where she "had done photocopying and stuff like that". However, she was ultimately "just told there was no job". She acknowledged that she had received payment for notice and holidays.

Under cross-examination, the claimant reiterated that she had known that the respondent would close down and that her job would not be there but said that MD had offered her a job at LT for when she returned from maternity leave.

It was put to the claimant that MD had said that he would give her a job if it were there. She replied:

"He never told me it wasn't. I only got paid up to the tenth of August. My maternity leave went on until September. He led me up the garden path by saying that there was a job there when there wasn't."

It was put to the claimant that 2007 had been a downturn year for business. Replying that this was not much good to her, she said:

"If I'd not gone on maternity leave I'd have had my job."

When it was put to the claimant that LT could have made her redundant in September she replied: "No, I don't accept that. How come I was the only one made redundant?"

It was put to the claimant that three others had been made redundant. She queried this saying: "As far as I recall he offered everybody a job."

When it was put to the claimant that MD had said that he would try she replied: "It was not try at all."

It was put to her that MD did not have a job to give. She replied: "I don't accept that. He offered me a job. It was not there when I came back."

Giving testimony about her subsequent attempts to find new employment, the claimant said that she had "made plenty of attempts to get a new job" and that she had "applied to businesses around" but that there had been "nothing suitable" and that there had been a "downturn" but that she had "something suitable now".

Questioned by the Tribunal, the claimant said that she did not know if somebody else had got the job that she herself had been promised. Asked if there had been such a job, she replied: "I presume there was because he offered me one."

Telling the Tribunal that six or seven people had worked for the respondent, the claimant said that there had been two mechanics, a storeman, a salesman and "one clerical girl with me".

When it was put to the claimant that transferring to a job in Charleville would not have been a "runner" for her, she said no.

The claimant told the Tribunal that she had done photocopying and tachographs at LT and that MD had asked her to do it.

Giving sworn testimony, MD said that he was the managing director of the respondent and of LT which were separate companies. He said that the respondent was still registered and was not insolvent but that it had ceased to trade. The respondent had sold and repaired cars. The respondent "had no business anywhere else". Referring to a company in Charleville, he said that it was another company again and that it was completely separate.

MD said that there had been "a general downturn in the motor business" and that the respondent had not been making money. MD's father had set it up. Closing it was not an easy decision. If MD had not lived locally it would have closed earlier. There were seven employees in the end including two mechanics and a salesman. Two people went to Charleville. One who went there on a temporary basis was made redundant. The staff had known that the closure of the respondent was "coming up". It had been known that the respondent was not doing well and that it would close.

In March (2007) MD called the staff together and said that the respondent would be closing and would try to relocate people where there were jobs. He said that he "would endeavour to give everybody a job". A major transport contract was planned in February. By July it had fallen through. When it did not materialise the respondent "had to scale back". The "anticipated posts" that there would be in transport were not there.

MD told the Tribunal that it was "not easy to close a business" and that "it affects staff and customers". He said that the claimant was a neighbour from the same town who had started as a shop assistant and had subsequently been trained in clerical work holding that post until the business closed.

MD added that he had not expected the claimant on the date in August but, when she came in, he told her the position so that, "if she had an opportunity of a job somewhere, she could take it" and he "put things in train to give her her statutory entitlements". He called to her within three or four

days to say that he was sorry to give her that news. He told his “wages people” to issue the claimant with a form. An appointment was made for form-signing but the claimant did not keep it.

MD told the Tribunal that the claimant had spent “a very limited time” in LT for photocopying and that it had not been more than fifty or sixty hours altogether. He concluded his direct testimony by saying that the claimant would have been made redundant anyway.

Under cross-examination, MD said that two mechanics, a storeman and a driver had been made redundant. When MD added that the storeman (also described as the parts manager) had been there about six years and had done courses, it was put to him that the storeman would have been more employable than the claimant. MD replied that he did not know and that the storeman had applied for other jobs but did not get them.

Asked what criteria he had used to select people for redundancy, MD replied that the clerical person who had gone to Charleville had been working in Charleville 75% of her time and “had been with us eighteen years”. He added that the other person who went to Charleville was a car salesperson.

Asked if the claimant’s pregnancy had been a factor in making her redundant, MD said that it had not and said that, though he had gone “back to the house”, he had “had no option but to let her go”. He added that it was “never easy to let people go”, that he “had to close the business”, that there were “no other selection criteria” and this was “dripfed” to people and to the public although it had been “well-known months and months before”.

When it was put to MD that the claimant had thought that there would be a job for her, he replied: “We thought that. I think I was acting in good faith. I did not want to upset her more.”

Questioned by the Tribunal, MD said that he had re-employed one person as a parts manager and this person was now at the transport department in the garage.

It was put to MD that it was 17 October before he had sent out the RP50 form. He replied that the business had closed in March, that the claimant had not been due back until September and that she was to have gone in for a meeting but did not do so.

Determination:

Having considered the evidence adduced, the Tribunal finds that the claimant's employment was fairly terminated by way of redundancy and, therefore, that the claim under the Unfair Dismissals Acts, 1977 to 2001, fails.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001, is dismissed for want of prosecution as it was acknowledged that notice had, in fact, been paid.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)