

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD1305/2008

Against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly B L

Members: Mr M. Noone
Mr A. Butler

heard this claim at Wicklow on 22nd April 2009

Representation:

Claimant: In person

Respondent : Mr. John Barry, Management Support Services (Ireland) Limited,
The Courtyard, Hill Street, Dublin 1

The determination of the Tribunal was as follows:

Respondent's Case

The respondent is a modest sized enterprise that supplies hot water equipment and other products and services to the construction industry. Its managing director vouched for the company's financial position as presented to the Tribunal. Those figures showed a twenty percent decline in its turnover in a twelve-month period up to September 2008 and a further significant reduction in its projected revenue up to September 2009. In response to this downturn the respondent's directors and staff have taken a considerable reduction in their remuneration. In addition the directors had to restructure the workforce as part of these cost cutting measures and one consequence of this restructuring was the decision to terminate the claimant's employment with the company by way of redundancy. Her position was not replaced.

The claimant had been employed on a fulltime basis as an administration assistant in November 2006 and her duties reflected the "mix and match" demands of this role. This included working in sales, transport and general office tasks. When other members of staff were absent on maternity leave the claimant also helped in the performance of their duties. The witness detailed the roles and functions of all the staff and outlined how personal circumstances and commercial demands influenced their changing roles within the company. The claimant had indicated in 2007 that she

was struggling with the work in the transport section. She recommended a particular person for that role. By early 2008 the respondent had recruited that person with the title of administration assistant. His role was more oriented towards the logistics, and transport side of the business. At that time the company did not realise the extent and nature of the forthcoming deterioration in their business.

When the decision came to make an employee redundant the witness and his co-directors felt that this new recruit was too specialised to be let go. The claimant's two former colleagues in administration had already left and the respondent had to rearrange other staff. Administration was the area in which savings could be made and the tasks of the claimant could be distributed among the remaining staff. The witness and a fellow director informed the claimant on 1 September 2008 that her employment had to be terminated due to the downturn in their business. The respondent paid her salary up to the end on September together with a modest additional imbursement.

Subsequent to that announcement the claimant then told the witness she was pregnant. He had been aware of her efforts to conceive a child but had not shared that information with his colleagues. Up to September 2008 the witness had been co-operative in allowing the claimant time off from work for treatment on this issue.

Claimant's Case

Following her appointment as an administration assistant the claimant worked with four other employees in an office. When one of those people went on maternity leave she took over her duties in transport administration. She continued with that role when that person returned to work. From January to March 2008 the claimant performed tasks in transport, sales and service administration. By that stage both women had permanently left the respondent and the company in turn had hired a person to attend to transport administration. The witness trained that person in some aspects of his work.

The claimant confirmed that the managing director was very supportive of her in her endeavours to start a family. However, when she was absent in the last week of August 2008 she received a phone call from him requesting a serious talk with her. That discussion revolved around the respondent's decision to make her redundant. It was the claimant's contention that she was unfairly selected for redundancy as she had the knowledge and experience to undertake most roles at the respondent's. However, she also accepted that she could not have properly performed the job of the new recruit. Nevertheless she felt the respondent could have made someone else redundant and allowed her to stay on. The claimant also felt discriminated against due to ongoing fertility treatment and indicated that factor also influenced the respondent to dismiss her.

Determination

Having heard this case the Tribunal has sympathy for the claimant. She was obviously a flexible and valuable employee who positively contributed to the welfare of the company. It is somewhat ironic that the person recruited by the respondent in early 2008 contributed to the company's decision to make her redundant.

The Tribunal accepts that this company was undergoing trading difficulties from early 2008 and that cost cutting measures were appropriate in the circumstances. The respondent has a responsibility and a right to determine how best to economise as it struggled with a new and deteriorating commercial situation. While it is never a pleasant experience to have to make a valued

employee redundant the Tribunal finds it acted in its own best interest in this case and neither unfairly selected nor discriminated against the claimant.

The claim under the Unfair Dismissal Acts, 1977 to 2001 therefore fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

