

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee

*-claimant*

UD1131/2008, MN1041/2008,  
WT466/2008

Against

Employer

*-respondent*

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**  
**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**  
**ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr T. Taaffe

Members: Mr W. Power  
Ms M. Maher

heard this claim at Dublin on 6th February 2009 and 18th May 2009

### **Representation:**

Claimants: Ms Pauline Codd B L instructed by  
Ms. Aileen Fleming, Daniel Spring & Co., Solicitors, 50 Fitzwilliam  
Square, Dublin 2

Respondent: Mr. Kieran Kelly, Solicitor of Fanning & Kelly, Solicitors, 2 Hatch Lane,  
Hatch Street, Dublin 2

The determination of the Tribunal was as follows:

At the outset of the hearing the claims under the Organisation of Working Time Act, 1997 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005 were withdrawn.

### **Respondent's Case**

The respondent is part of a larger business group in the media print industry. The events in this case were based in the south east of the country particularly in its Wexford town office. Its operations director outlined the background and circumstances that resulted in the termination of the claimants' employment in August 2008. It was the respondent's case that both employees cessation of employment was by way of redundancy. According to the witness the claimant was engaged in the administrative side of the business and started work at the respondent's accounts section. She later took up duties in what he called the front office and that among other activities she dealt directly with members of the public.

Their duties therefore entailed dealing with advertisements, post and sales. That front office was staffed by several staff who had different work patterns. The director described 2007 as a very good year in a commercial sense. However, that state of affairs did not extend into the following year as a general slowdown in business had an increasing negative impact on the business and its revenues. The witness cited a twenty-five percent decrease in recruitment advertisements as an example of this deteriorating financial situation. The respondent was forced to examine its cost base and its overall activities. A meeting took place in late July 2008 and addressed these issues.

It was decided that three redundancies were needed from the administrative section of the respondent, one being in Gorey and the other two from the office in Wexford. The respondent adopted a skills set basis approach to the selection process. That process resulted in the redundancy of the claimant.

The Group Director HR Ireland told the Tribunal that in 2008 the business declined in the group and Wexford was no different. On 24 July 2008 management had a meeting. He contacted the claimant's union representative prior to the meeting and outlined the decline in business. The steps to be taken were outlined as was the criteria for selection for redundancy and ex gratia terms. The criteria in outside offices was different. There were no names mentioned at meeting regarding who was selected. He was asked by the union why there was no negotiation and that there should be further negotiations regarding the package. Local management completed an assessment of skill sets. The details of the package were made available to staff and there were no names mentioned at the meeting regarding who would be selected.

He received an e-mail on 30 July 2008 from the claimant's trade union representative regarding the redundancies in Wexford. The trade union official raised a number of queries including who was being selected for redundancy, the criteria used to select, the company appeals process and if a training fund was available to assist employees seeking alternative employment. He responded by e-mail dated 31 July 2008

In cross-examination he stated that in previous redundancies there was consultation with the union. In relation to voluntary redundancy the respondent consulted and negotiated with the union. The claimant was not refused union representation or consultation. Put to him that there was no consultation regarding the selection criteria he replied that the respondent met the union. The trade union was informed on 24 July 2008 who the individuals were and the packages were ready for presentation. He reiterated that the respondent presented the steps that needed to be taken. Conversations were conducted over the telephone regarding skill sets and changeability of sales staff. He stated that the claimant worked primarily in administration. The claimant sold advertising and also did walk in business. He did not have an issue with the union regarding training. An advertising system was in place and training was provided at the time. There were no complaints regarding the claimant's work. It was not true that the respondent decided that the claimant was not flexible as she had children. There was no memorandum of the conversations between him and the Wexford office of their discussions on the skill sets of the employees.

It was not true that an employee JS was more flexible than the claimant who had children. Since 2002 to 2008 the respondent reorganised its business and offered a very genuine ex gratia payment to staff that had to leave. The respondent offered voluntary redundancy

where it could. It could not accept that a sales representative would take voluntary redundancy. In 2004 the respondent had flexibility and inter changeability in staff.

The respondent spoke to the trade union on 24 July 2008 and the trade union did not accept the situation. The respondent did not have a difficulty with the claimant's work. It was standard policy to issue a reference. He was not aware that another member of staff AS received a better reference than the claimant.

In answer to questions from the Tribunal he agreed that there was a clear agreement with the union and it had an obligation to abide by this. The respondent sought a meeting on 24 July 2008 regarding Wexford and Drogheda and diary differences prevented a meeting-taking place earlier. The redundancy was discussed prior to 24 July 2008. Put to him that two weeks prior to the redundancies there was no consultation with the union he replied that he wanted to be prepared with an offer. He would have satisfied himself that he knew the people with the skill sets. Prior to the respondent meeting the union it had decided what needed to be done. His colleague took notes at the meeting on 24 July 2008.

### **Claimant's Case**

The trade union representative CK told the Tribunal that the respondent was almost one hundred per cent unionised. Her understanding was that there was an agreement with the company that there would be consultation in a meaningful way with the union on behalf of the members regarding redundancy. The practice she was familiar with regarding redundancy was that the respondent met the union and rolled out issues.

A meeting took place on 24 July 2008, which was attended by the HR director, the general manager and the operations director. The meeting was hostile regarding the process presented to the union. There was no consultation regarding the criteria for redundancy and the meeting made a mockery of the consultative process. There was a discussion regarding flexibility and skill sets and if the claimant had as good/greater skill sets than other employees. At the meeting no evidence was produced regarding the skill sets. The respondent stated that it would seek voluntary redundancy and failing that would look at other options. She was at a loss as to why the claimant was selected for redundancy.

The claimant told the Tribunal that she commenced employment with the respondent in 1997 in the accounts department. She was not given a contract of employment but was given a list of duties. In April 2005 the accounts were outsourced. All employees did a bit of everything. On 24 July 2008 she was summoned to a meeting. She first became aware of redundancy May/June 2008. Management held a meeting and she was aware that there was something in the air. The atmosphere at the meeting on 24 July 2008 was not pleasant. MR, the operations director informed her of the meeting on 23 July 2008. She did not believe that there was any consultation with the union and she was informed that redundancy would be implemented by 8 August 2008 the day before she was due to go on two weeks holiday. A selection criterion for redundancy was not negotiated. The claimant was told she would be given help with her CV. She accepted statutory redundancy but not the ex gratia payment she was offered.

The reference the respondent gave her was more like a statement and she had always received a decent reference. She has sought alternative employment but to date has not

been successful. She undertook an ECDL course.

In cross-examination she stated that she did not contact the operations director regarding her reference as she would not beg for a reference and would be embarrassed to show the reference to a prospective employer. She was in touch with job agencies regarding her CV.

She undertook the payroll until 2005 and she felt she was capable of undertaking any tasks assigned to her in the office. In 2008 she was able to use the software system that was in place. She undertook a significant portion of her work on a publication I. O. Her union representative queried the ex gratia package on her behalf.

### **Determination**

A redundancy situation arose in the respondent company as a result of a significant deterioration in the company's advertising revenues and the respondent was entitled to select two for redundancy.

The respondent is obliged to provide the claimant with the opportunity to present her case for remaining in her employment.

The Tribunal is not satisfied that this opportunity was provided to the claimant and that the claimant was therefore unfairly selected for redundancy and is entitled to succeed in her claim for unfair dismissal.

The Tribunal is of the view that the redundancy lump sum package was satisfactory and awards the sum of €16,197.28 under the Unfair Dismissals Acts, 1977 to 2007 and in deciding this amount has noted that the claimant has received her statutory redundancy.

The Tribunal is of the view that it is incumbent on the respondent to provide the claimant with a satisfactory reference, which it is believed was not done in this case.

The claims under the Organisation of Working Time Act, 1997 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005 were withdrawn prior to the commencement of the hearing and no award is being made under these Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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