

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee

UD1130/2008, MN1040/2008, WT465/2008

claimant -

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 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under the Organisation of Working Time Act, 1997 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005 were withdrawn.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 claimant's employment in August 2008. It was the respondent's case that the claimant's 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. Her 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 a meeting took place. 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. 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 no names were 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 queried 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 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 of the skill sets of the employees.

It was not true that an employee JS was more flexible than the claimant. 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 interchangeability in staff. The claimant worked sixteen days in the Wicklow office.

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. 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 she commenced employment with the respondent on 18 May 1988. She commenced in the accounts department as a colleague was on maternity leave for three months.

The respondent moved to a new location and she worked as a receptionist in the front office and worked a three-day week. She worked full time for six months. Her duties included answering the telephone, receiving advertisements, dealing with the public and administrative duties. The main bulk of her work was small advertisements and classified advertisements. Five people worked in the front office. She undertook work on a publication I.O. and took subscriptions, general duties and handled cash. All staff had the same skill sets and on occasion when she reported for work she could be assigned to a different area. In November 2007 she worked in Wicklow and four to five years ago she worked in Gorey for two weeks and this did not pose any difficulties for her. She did not receive any formal training regarding her duties and she learned on the job. A new advertising system was introduced and all staff were familiar with it. On Mondays she worked in advertising and the deadline was 5p.m. Tuesday was her day off and on Wednesday she could be working on I.O. or undertaking subscriptions or advertising.

She first heard about redundancy on 23 July 2008 and she received a call to go to the office on Friday morning. She reported to the office on Friday and was given her redundancy calculation and a severance package. She asked for holiday pay and notice. She received a reference but was disappointed with the reference as after ten years of service she expected a better reference.

Since then she has made strenuous efforts to obtain alternative employment but to date has not been successful.

In cross-examination she stated that she did not ask the respondent for a different reference. At the time of her redundancy she was not undertaking work in accounts. She took sales off customers who walked in off the street and she did not undertake telesales. She did not deal with bank statements or the holiday roster. The accounts were outsourced in 2004/2005. The reason she felt she was selected for redundancy was due to an issue of flexibility. She was asked if she could be flexible to work full weeks on a casual basis and this was not feasible for her.

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 claimant compensation in the amount of €12,776.80 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)

