

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE – *claimant*

UD16/2009

against

EMPLOYER – *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O’Leary

Members: Mr. R. Murphy
Mr. S. O’Donnell

heard this claim at Dublin on 16 March and 2 June 2009

Representation:

Claimant: Mr. Emmet Whelan of BCM Hanby Wallace Solicitors,
88 Harcourt Road, Dublin 2

Respondent: Mr. Tom Mallon BL instructed by Damien Lee of Philip Lee Solicitors,
7 – 8 Wilton Terrace, Dublin 2

The decision of the Tribunal was as follows:-

Respondent’s Case

The managing director gave evidence. The company is engaged in public/private partnership projects. They engage in a competitive tendering process for particular projects (often schools or hospitals). When a tender is successful (on average 1 in 3 are successful) a team is assembled to finance, build and manage the project. The state pays a yearly fee for the facility.

In early 2008 only one out of an expected 4 projects came to market and sought tenders. Also 2 competitor companies entered the market. The projects on hand were finishing. It would be at least a year before a new project started. There was no sign of a pick up in business.

The group chairman wanted restructuring. Overall staff numbers reduced by half. The claimant was one of 2 branch coordinators in Ireland. One branch coordinator was based in Belfast and one was based in Dublin. Two were no longer required. A decision was made to make one post redundant. The managing director was not involved in making the decision but he supported it.

The HR manager wrote to the claimant on 6 March 2008 to inform her of the restructuring and of the likely redundancy of one of the branch coordinator posts. A meeting was arranged to discuss the issue on 12 March. The HR manager and the area manager chose the claimant to be made redundant. They used a matrix to aid their decision-making. The Belfast office was closed early in 2009.

The help desk manager for a sister company to the respondent gave evidence. Earlier in her career the claimant had worked as a help desk operator. There was a vacancy in his department so he phoned the claimant. The claimant did not take the position and the position was subsequently filled. The salary for a help desk operator was €27k for a full time position.

The HR manager gave evidence. In January 2008 the group chairman decided that there was a need to rationalise business resources in Ireland. Two branch coordinators were no longer needed. She wrote to both and arranged to meet them. The claimant suggested a job share option. The other branch coordinator was not enthusiastic. The area manager felt that a job share would not work in this instance. The other alternative was the position on the help desk. The claimant was not interested in the position. On the basis of the criteria on the matrix they selected the claimant for redundancy.

Claimant's Case

The claimant gave evidence. She commenced work in November 2005. On 6 March 2008 she was not at her desk when her branch coordinator colleague phoned her to ask if she received an interesting email. She was shocked to receive the letter from the HR manager. She thought the company was doing well. The claimant suggested to her colleague that they job-share. That would allow them both to retain an income and a job they liked. Her colleague thought job sharing would be a good idea. The claimant felt that her job was in greater jeopardy. She was advised to look for alternative employment. Also, the project director she worked with was made redundant, while her colleague's project director was retained as area manager.

The HR manager for the help desk phoned her. She had a vacancy for a help desk operator. The claimant was offered the job to work 8.30am to 6.30pm at a salary of €12k per annum. The claimant was not interested in working longer hours for 1/3 of the salary. She was informed by the HR manager that there was a project manager job available, however she did not have the qualifications for that position.

The claimant felt that when the decision to make one of the branch coordinators redundant was made, her colleague and not herself should have been selected.

The representative for the respondent said that the claimant was mistaken in her view that she was offered an alternative position paying €12k per annum for full time work. That would be less than the minimum wage. The salary offered was in fact €12 per hour not €12k per annum.

Determination

The Tribunal determines that the claimant was fairly dismissed by reason of redundancy. The Tribunal considered the matrix used by the respondents when making the decision and find that some of the reasons used were subjective rather than objective as should be the case. However the overriding consideration in making the selection between the two employees was the length of service and the Tribunal decides that in selecting the claimant who had less service than the other employee the respondent acted properly.

The Tribunal note from it's records that the alternative position offered to the claimant by the manager of the help desk was at the rate of €12 per hour and not at €12k per annum as cited later.

The claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)