

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

-claimant

UD370/2008

against

EMPLOYER

-respondent

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. K. O'Mahony B.L.  
Members: Mr. M. Forde  
Mr. T. Kennelly

heard this claim in Horse & Jockey on 1st October 2008  
and 30th January 2009

#### Representation:

Claimant: Ms. Cliona Clancy BL instructed by Ms. Deirdre Lyons,  
Butler, Cunningham & Molony, Solicitors,  
71 Liberty Square, Thurles, Co. Tipperary

Respondent: Mr. Jim Healy, IBEC, Gardner House,  
Bank Place, Charlotte Quay, Limerick

#### **Summary of the Evidence**

A third party owned a site on which two businesses operated; an animal feeds business and a sugar packaging business. In late September 2006 the respondent purchased the animal feeds business and the \*\*transfer of undertakings regulations applied to the purchase. The sugar business on the site ceased trading during the time of the transfer. Five employees transferred to the respondent and the others were made redundant but some of the latter were taken back by the respondent on fixed

term contracts. The claimant transferred to the respondent because of her experience and knowledge of the animal foods business. MF joined the transferred business in September 2006 as its manager.

The claimant had been employed in the businesses from late 2000 and in May 2003 she had been appointed Operations Team Leader of both businesses on the site, which appointment was effective from 1 June 2003. Her responsibilities included production, production scheduling, transport, stock management, logistics, pallet tracking, regulatory compliance, quality management systems, office administration and continuous improvement. It was the respondent's evidence that although 50% of her role had been for the sugar business she transferred to the respondent because of her experience and key knowledge of the animal feeds business. The claimant, who was on maternity leave at the time of the transfer, met with the respondent's CEO twice, at his request, to informally discuss the business with him but her own position was not discussed at either of these meetings. It was the claimant's evidence that most of her tasks and duties were done for the animal feeds business and that her only role in the sugar business had been liaison with the men in the yard and the trade union members. The claimant's role in the transferred business was operations manager and she was also in charge of transport and dispatch.

On the claimant's return from maternity leave in January 2007 work she had been allocated a different and smaller office with better facilities away from the mill building. The claimant felt that she was being pushed into a clerical role and in March 2007 she sought clarification of her role. The culmination of two meetings (15 March and 4 April) on the issue both parties agreed a specification of her role. GM signed the document in the claimant's presence but the claimant took it away to consider it. It was the evidence of the respondent's human resource consultant (HRC) that, on a number of occasions she had requested the claimant to return the signed form but had never received it; the claimant had told her that she did not want to sign the document, as it would override her contract of employment; however on her (HRC's) assurance that her contract was protected the claimant verbally communicated her acceptance of it to her. The claimant's evidence was that she had signed the said document some time subsequent to the meetings and put it under GM's door. The split of the claimant's functions between the two original businesses had not been discussed during the job specification meetings.

The claimant had been doing the weighbridge functions but in April 2007 at the claimant's request a weighbridge operator (JR) was taken on. The claimant trained him in on the weighbridge and she covered for him during his breaks. It was the claimant's evidence that she would have done this herself had she known that her job was at risk.

Around mid 2007 the respondent's business was delivering only half the expected profits and this was not sustainable. Over a series of meetings, throughout July, August and September of 2007, senior management, MF and HR carried out a full review of the operations of the business. They concluded that management was top heavy and a decision was taken to remove one layer of management. It was decided that the claimant's position should be made redundant because her position carried the highest pay, only 50% of her duties had been transferred to the respondent, some of her duties had become automated or had devolved to other employees. Furthermore, the respondent's sister company which produced compound animal feeds did not have a similar layer of management. No other position could be made redundant at the time. It was not possible to make any other role redundant at the time. There were no other positions available in the animal feeds section at the time. The claimant was adamant that the over 90% of her work had been done for the animal feeds business.

The respondent produced a document drawn up in early September 2007 showing the “existing structure” and a “proposed structure” for the business. In the “existing structure” the claimant was described as a mill manager with an overall cost to the company year of €61,000.00 per annum but she did not feature in the “proposed structure”. Apart from GM, the Financial Controller and the three sales representatives the proposed structure envisaged increased salaries, responsibilities and/or working time for four existing employees and the employment of another employee. This proposal would result in a saving of €24,000.00 for the respondent. While this document was undated it was HRC’s evidence that it was created on or around 10 September. The proposed structure was never implemented.

The financial position and the claimant’s diminishing role were crucial factors in the decision to make her position redundant. Automation, including automation of pallet tracking, was also a key factor in the decision to make the claimant’s position redundant.

GM distinguished between doing a job and managing it. He accepted that three employees had been taken on but said that they were at operator level on a standard basic salary whereas the claimant had been at management level. .

Two sales positions became vacant in summer 2007. These had been advertised in the local papers and were filled in late August 2007. According to the respondent the claimant had not wanted to do sales in March 2007. The remuneration would have been well below what she was earning at the time. GM felt that it did not seem to be a reasonable package or suitable job to offer her. The redundancy offer was more reasonable. The posts were filled well in advance of the claimant’s redundancy. The claimant was not aware of the vacancies but and in any case she did not realise at the time that her own job was at risk. She had done some sales in the business: on the commencement of her employment in the animal feeds business she had been in logistics and she on occasion she had covered sales for a few days.

The claimant felt that her duties were taken from her. On her return from maternity leave those who had been covering her duties continued to do some of them. JD who had been made redundant was brought in from Carlow on a three-day week doing credit control for the animal feeds (he had been doing this before the transfer). The claimant denied that some of the duties transferred took only a miniscule amount of time. Production had been a substantial part of her role. GM transferred production to JR. In November WR and MN who had been general operatives in the mill were made redundant and were taken back by the respondent on fixed-term contracts. The claimant had been responsible for maintenance in the animal feeds business; she was adamant that she did not have any role in maintenance in the sugar business. WR became the control room operator and would be the first person to see what maintenance was needed. While responsibility for pallet tracking lay with the claimant the day-to-day tracking was done by the administrative staff. So the automation of the system did not make a substantial difference to her workload

### **Determination:**

Having carefully considered the evidence adduced, the Tribunal accepts that the respondent was entitled to remove a layer of management and carry on work with fewer employees (s. 7(2)(c) of the Principal Act as substituted by s. 4 of the 1971 Act). However, the respondent was carrying out a review of the entire operation over July to September 2007. From the evidence it is clear to the Tribunal that the claimant’s position was being considered at the time two new sales representatives were being recruited in July and August but assumptions were made as to what her attitude might

be to a position in sales. The respondent ought to have offered a sales position to the claimant. Whilst one assumption was that the sales job would not be suitable because it carried a lower salary than what the claimant was earning prior to her dismissal, subsequent events show that the claimant in fact took up a position at a much lower salary than she had been earning with the respondent. On this ground the Tribunal finds that the claimant was unfairly dismissed. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds. The Tribunal deems it just and equitable to award the claimant compensation in the amount of €48,000.00 under the said legislation.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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