

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

CASE NO.
UD1110/2009

against
EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr D. Moore
Mr B. Byrne

heard this claim at Tullamore on 27th November 2009
and 18th December 2009

Representation:

Claimant(s) :

James Lucey & Company, Solicitors, Cumberland House, Emmet
Square, Birr, Co Offaly

Respondent(s) :

Mr. Philip O'Riada, O'Riada, Solicitors, Liffey House,
Primrose Hill, Celbridge, Co. Kildare

The determination of the Tribunal was as follows:-

Respondent's Case

The first witness for the respondent gave evidence that he is a self employed risk manager and he carried out work for the respondent company in that area and in the area of Human Resources. Due to a downturn in the business towards the end of 2008 all managers had to assess their costs base and in January 2009 a position of business development representative held by the claimant was made redundant. The decision to make the claimant redundant was based on a geographical decision and her region was absorbed by the remaining business development representatives. There was no customer practice of last in first out in operation by the respondent company. The position identified was in the centre of the country and that was the position held by the claimant. Consideration was given to offering the claimant an alternative position within the company but no

alternative position was available at the time she was made redundant.

In May/June 2009 other business development representatives were made redundant and the company retained just one business development representative based in north Dublin. The witness went on to give evidence that he was aware that the claimant had been on long term sick leave from July 2008 until January 2009 prior to being made redundant. The company does not operate a sick pay scheme but in this instance the claimant was paid from July 2008 until November 2008 while on sick leave. The claimant had made a complaint of bullying and harassment in October 2007 against her business development manager. The witness conducted an investigation into the complaint and concluded that the complaint could not be sustained but discovered that there had been instances where her manager had behaved inappropriately. As a result the manager was sidelined and the company ensured that he would have no further contact with the claimant. She continued to work for the respondent after the investigation concluded and the fact that she had made a complaint had no bearing on the company's decision to make her redundant.

Under cross examination he confirmed that he was aware that the claimant's region extended into the west as far as Sligo. At the time the claimant worked for the company there were five business development representatives. He confirmed that the claimant worked in areas other than the midland region but he was not aware of this at the time she was made redundant. He confirmed that two business development representatives made redundant after the claimant accepted offers of alternative positions within the company. He agreed that a map presented to the Tribunal outlining the different regions was not presented to the claimant when she was made redundant.

In reply to questions from the Tribunal he agreed that length of service was not a factor in the decision to make the claimant redundant. He confirmed that an alternative position became available and was offered to the claimant some time after she was made redundant but she refused the offer.

The next witness gave evidence that he is a field sales director for the respondent company. The regions covered by the business development representatives directly related to their place of residence. Each representative had a journey plan which had a direct correlation to their place of residence. The business development part of the group was not performing well and it was identified as a cost cutting measure within the company. The position held by the claimant was in the midlands and bordered all the other regions. Accordingly a small piece of the midlands region was allocated to each other region and the position was made redundant. The decision was based on purely geographical considerations. The fact that the claimant had been on sick leave and had made a complaint of bullying was purely co-incidental and had no bearing on the decision to make her redundant.

The claimant was paid redundancy greater than her statutory entitlement and, on the 13 February 2009 was offered an alternative position in the company as a merchandiser. This position became available subsequent to her being made redundant. Her salary as a merchandiser would have been less than that as a business development representative and the claimant declined the offer.

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Claimant's case

The claimant held that she was unfairly selected for redundancy. She had been on maternity leave and returned to work on a three or four day a week basis. However this arrangement was temporary and it was planned that she would resume full time within a certain time frame.

The claimant said that she was not given any advance warning of a redundancy situation even though she had been selected for redundancy in advance of the meeting on 9th Jan 2009. At no stage was she given an opportunity to offer alternative suggestions to her being made redundant. Therefore she held that there was no fair procedure in the selection of her for redundancy.

With regard to the subsequent offer of alternative employment with the respondent the claimant argued that this was not a suitable alternative for several reasons.

Determination

The Tribunal found that the selection of the claimant for redundancy was procedurally unfair. She was not offered the opportunity of being accompanied to the meeting at which she was made redundant. Nor was she informed of the nature of the meeting of 9th Jan 2009 prior to the meeting even though the decision to terminate her employment was taken some time before hand.

The Tribunal finds that the claimant was unfairly dismissed under the terms of the Unfair Dismissals Acts, 1977 to 2007. Having determined that the most appropriate and preferred remedy of both parties is compensation, the Tribunal awards €13,000 to the claimant.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

