

## EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NOS.

EMPLOYEE – *claimant*

UD375/2009  
WT165/2009

against

EMPLOYER – *respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007 ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. P. McGrath BL  
Members: Mr. T. O’Sullivan  
Mr. J. Moore

heard this appeal at Dundalk on 3<sup>rd</sup> November 2009

Representation:

Claimant: Ms. Sile Rooney BL, instructed by Ms. Sinead McNelis  
Of Myles & Co. Solicitors, 21 Hillside, Monaghan, Co. Monaghan

Respondent: Mr. Michael Woods of Woods Ahern Mallen, 3<sup>rd</sup> Floor Elgee Building,  
Market Square, Dundalk, Co. Louth

The determination of the Tribunal was as follows:-

#### **Respondent’s Case**

The general manager of the respondent gave evidence. The business is a hotel built at the height of the boom. The interest payments are very high and will not go away. Initially most of his customers came from financial organisations on team building or personnel development exercises. Then in mid-September 2008 instead of the projected increase in business there was a dramatic drop in turnover. Costs had to be cut. The sales staff began looking for customers in the over 55 market.

Three staff were made redundant, the claimant who was a receptionist, a store man and a marketing assistant. The sales and marketing function was consolidated for the two businesses resulting in the redundancy of the marketing assistant. The head of department took on the increased workload of the store man's work. There were four receptionists but only work for three, so the claimant was made redundant.

In making the decision on which receptionist to make redundant he did not have written criteria. He did not consider their qualifications or their length of service. He did not consider putting all four on shorter working hours. Having receptionists working a three-day week is a nightmare for someone running a hotel. When making the decision the general manager was aware that the hotel's customers were increasingly drawn from an older age group than before. It was his view that the claimant was less skilful and less patient in dealing with older people than the other receptionists. The three others were better at the job. He did not discuss his selection with the claimant or with her colleagues. He observed the receptionists working and put himself in the mindset of a customer. The claimant was more impatient and engaged in less conversation with customers than did her colleagues. On that basis he selected the claimant for redundancy. The others did a better job.

He did take on another member of staff at a receptionist's salary. Her job was primarily sales but she did provide cover for reception as well. He did not authorise the placing of an advertisement for a receptionist in the local paper.

A receptionist gave evidence. She works doing general receptionist tasks. Initially she worked full time. Now she works a three-day week.

### **Claimant's Case**

The claimant gave evidence. She did all the basic reception duties. She also gave information about weddings and functions and if required she showed potential customers around the function rooms.

People showed her the advertisement for a receptionist with the respondent that appeared in the local paper. To her knowledge no one was taken on.

There was no discussion or consultation on redundancy until 17 October 2008 when she was told that because of a downturn in business she was being made redundant. She trained the marketing assistant to do her job.

### **Determination**

The onus is on the employer to demonstrate that a redundancy situation existed in the workplace and additionally that some sort of reasonable rational was applied to selecting any person or persons for redundancy.

In light of the uncontradicted evidence provided, the Tribunal must accept that there was a need for redundancy against a difficult economic backdrop.

Whilst it might have been desirable to give the option of working shorter hours to all four receptionists, this option does not seem to have been considered. Each of those four receptionists was working equivalent hours on equivalent salaries of circa €22,000.00.

The staff was given no warning that redundancies were being considered. The claimant was selected over her three colleagues to be made redundant.

There appears to have been no reasonable attempt on the part of the employer to formulate a selection process in advance of making that selection. For example, no consideration was given as to length of experience held by each of the receptionists. No thought was put into additional skills that each of the four receptionists might be in a position to offer. No investigation of qualifications and capabilities was conducted. The receptionists were not compared one against the other to try to determine what skill-base each of them had.

In evidence the respondent stated that he had absolutely no complaint with the claimant's performance other than perhaps that she was occasionally reserved with clients. He was not asked about the other receptionists.

The respondent could not give any reasonable or substantive reasons for his selection of the claimant. The onus rests with the respondent to demonstrate that the selection was fair in all the circumstances and the respondent has not, in the opinion of this Tribunal, overcome this evidential burden. Whilst the Tribunal might have every sympathy for the respondent insofar as he was certainly facing a dire drop off in business this cannot be an excuse to overlook the need to be exacting and thorough in selecting which person is to be made redundant.

In all the circumstances, the Tribunal finds that the decision to make the claimant redundant amounted to an unfair selection for redundancy. The claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds. The Tribunal awards the claimant €8,000.00 compensation.

It is noted that the claimant has already been paid a redundancy lump sum.

No award is made under the Organisation of Working Time Act 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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