

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE

-appellant

UD128/2009

MN118/2009

against

EMPLOYER

-respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr F. Moloney

Ms. P. Ni Sheaghda

heard this claim at Naas on 2nd September 2009

Representation:

Claimant: Arthur E Mac Mahon, Solicitors,
Poplar Square, Naas, Co. Kildare

Respondent: In person

Background:

The respondent is a dry cleaners and launderette. The claimant worked in various areas of the business.

Respondent's case:

The owner of the respondent gave evidence. He explained that because of the circumstances he had to let the claimant go. The claimant told him in December 2007 or January 2008 that she would not work on Saturday. He told her that he could facilitate her by placing her in the dry cleaners as the dry cleaning and alteration areas are not open on Saturday.

When the staff heard of pending redundancies the claimant told one of the other workers that she (the other worker) would be first to go. The worker who had been told this came to him upset. He saw this as bullying. He spoke to the worker and told her that he did not see her as being the first to be let-go. He obtained advice and was told that the selection for redundancies did not need to be on a last-in-first-out basis, and they could keep the staff that would help out during bad times.

His wife sat down with the claimant and told the claimant that times were difficult and she was being made redundant.

They asked the other workers if they would let another worker go or if they would reduce their hours. All of the employees decided to work a four-day week. Also all of the employees took a ten percent pay cut.

Regarding the allegation of the claimant of choosing her because of her pregnancy, the witness explained that that they have or have had six women who were pregnant and they treated them well, and maybe better than those who were not. They regarded the allegation as an insult.

In cross-examination the witness explained that the claimant was let go because of a downturn in business. Also they were advised that they could retain the staff that were most valuable to the company.

Claimant's case:

The claimant told the Tribunal that she worked five days a week and one of these days could include Saturdays. This changed and she did not work Saturdays.

The owner's wife called her to a meeting on 28th November 2008. She told the claimant that she would have to let someone go as business was not going well and that they had chosen her. The claimant explained that others had less service, she was there for more than a year and others were there for some months only. She was told that it was because she could not do Saturdays and because she was late back from her holiday. She was also told that it was because she was pregnant and could not do the other jobs, that is working in the dry cleaners because there were chemicals there and she was pregnant and because she could not lift bags of laundry.

Determination:

The Tribunal accept that a genuine redundancy situation existed in the company. The selection process was not transparent and was not entirely fair. When the situation arose the second time there was a more acceptable solution, which was fairer to all the employees concerned.

On that basis the Tribunal find that the claimant was unfairly selected for redundancy, therefore that claim under the Unfair Dismissals Acts, 1977 to 2007, succeeds. The Tribunal, however, make no financial award under the Unfair Dismissals Acts, due to the fact that the claimant made no efforts to secure employment from 28th November 2008.

The claim under the Minimum Notice and Terms Of Employment Acts, 1973 to 2005, succeeds. Accordingly the Tribunal awards the claimant the sum of €400.00, this being one weeks gross pay.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)