

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM OF:**

**CASE NO.**

EMPLOYEE

UD1233/09

- claimant

**against**

EMPLOYER

- respondent

**under**

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr R. Maguire, B.L.

Members: Mr. L. Tobin  
Mr J. Jordan

heard this claim at Wicklow on 7th May 2010.

#### **Representation:**

Claimant: In person

Respondent: Mr. David Heffernan BL, instructed by Ms. Sighle Duffy, Murray Flynn Maguire,  
Solicitors, 4-6 Pembroke Road, Dublin 4

The determination of the Tribunal was as follows:-

#### **Respondent's Case:**

The company is a supplier of wholesale sports goods and was incorporated in 2003. DD, a director looks after marketing and PR, his co-director, AOH is involved in accountancy work, KG is office administrator and there is a sales representative and a warehouse manager.

As the company's workload increased, DD advertised in mid 2006 initially for a full-time administrator. He interviewed the claimant but she was only interested in working part-time. The claimant was offered a contract of employment as part-time administrator and commenced employment on 12<sup>th</sup> June 2006. She worked extra hours to cover holiday periods. In September 2008 when the claimant indicated she could not cover for holidays because of her children's school term, DD agreed to pay for child care. It was the only option he had. Initially, the claimant worked from 9.30 am to 2 pm. After a month she asked to reduce her hours and worked from 9.15 am to 1.00 pm. No reduction in the claimant's wages occurred at this time.

On 12<sup>th</sup> October 2006 DD, met KG and the claimant to discuss roles and the workload. DD was trying to be flexible. At that time the claimant was also helping DD with marketing and PR and was spending less time working in general administration. The claimant enjoyed helping DD out in PR work. She received commission in relation to a new brand. During the claimant's tenure she gave herself the title of Marketing Manager and when DD asked her why she called herself Marketing Manager, the claimant replied that it sounded good. KG had the lion's share and looked after work such as end of year figures and returns and had acquired a certificate in accountancy. The claimant was not involved in the main accountancy area of the business and did not do the bookkeeping.

In 2008 €200,000 was lost in sales. Turnover dropped also. The retail trade was down considerably on the previous year's trading. Two brands had gone out of business. The company was advised to cut expenses. Having seen the company's accounts in early February 2009 they were advised to severely cut spending costs and to look at wages as it was the biggest outgoing.

DD looked at the roles. He spoke to staff individually. He decided that the sales representative would no longer receive commission and the warehouse manager's hours were to be halved. As the claimant had been employed to help the overload of work in general administration and was helping DD in PR and marketing it was decided to make the claimant's position redundant. From then on it was decided that DD, AOH and KG could carry out all essential work.

DD met the claimant on 20<sup>th</sup> February 2009 and informed her that her employment was being terminated. He had explored all possible alternatives but was left with no option but to make the claimant's position redundant. The matter was communicated to the claimant in writing of even date. The claimant discussed her position. She felt it was not fair and enquired if DD had looked at the possibility of her job sharing with KG. DD had spoken to KG but she showed no interest in job sharing. The claimant was paid her statutory entitlement. She sought additional money and received an ex gratia payment of €1000.00.

### **Claimant's Case:**

The claimant applied for the full time position of office administrator. Soon after a family member became ill and the claimant indicated to DD that she would be delighted to accept a part-time role. KG's predecessor, A trained her in on the job. When A left, and as the claimant had a recruiting and HR background, she assisted in the selection process of a new administrator. KG was appointed to that role. She trained KG in on the job. KG often came to her with work queries. She worked on general administration work and also helped DD with PR and marketing. She looked after the payroll when KG was away. She was available to do whatever work was assigned to her. She was not taken on as a back up to anyone. As the claimant had trained KG in on the job she was capable of doing her work.

DD met the claimant on 20<sup>th</sup> February 2009. He said that unfortunately he had to make her redundant. She told DD that it was grossly unfair. KG had told her that she was interested in job sharing with her. DD said this was not suitable and he had already asked KG if she was interested in job sharing. The claimant felt because of the recession she had been singled out and job sharing was an option. She would have been happy to take a pay cut.

Following her redundancy she e-mailed DD stating that she had enjoyed working for the company and wished him ongoing success in the future. She also said in her e-mail that she would be happy

to help out the company if they were stuck for cover. It was important that she maintain her integrity and it was an honest response to her notification of redundancy.

The claimant has not secured work since the termination of her employment. She has applied for many positions but to no avail.

**Determination:**

The Tribunal carefully considered the evidence adduced at the hearing. The Tribunal is satisfied that a genuine redundancy situation existed. Due to a downturn in the company's business they were advised to cut costs. The claimant's position has not been filled, the work could now be done by the remaining employees. The claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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