

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE - *claimant*

CASE NO.
RP1239/2009
UD1084/2009
MN1094/2009
WT485/2009

against
EMPLOYER - *respondent*

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms D. Donovan BL

Members: Mr J. Hennessy
Mr T. Kelly

heard this claim at Waterford on 6th July 2010

Representation:

Claimant(s) : Mr. Cephass Power BL instructed by Eoin M. Dee, Solicitor, 48 The Glen,
Waterford

Respondent(s) : Mr Tom Murrans, Peter O'Connor & Son, Solicitors, Wyse
House, Adelphi Quay, Waterford

The determination of the Tribunal was as follows:-

Preliminary Point

The claims under the Minimum Notice and Terms of Employment Acts 1973 to 2005 and the Organisation of Working Time Act 1997 were withdrawn during the course of the hearing.

Respondent's Case

The proprietor of the respondent firm of architects hereafter known as (MT) gave evidence that his firm has been in practice since 1986. The practice initially grew slowly but expanded rapidly over the Celtic Tiger years having a total of 22 employees by June 2008. Due to the economic downturn which resulted in the collapse of three major projects it was necessary to introduce a programme of redundancies in September 2008. The firm could not financially sustain its employee numbers and the workforce was reduced to 10 by June 2009. The firm currently has a total of 8 employees mainly fee earners. As part of a process of restructuring the firm outsourced its Information Technology work and further outsourced its general finance management work to its accountants.

The witness told the Tribunal that the claimant went on maternity leave in February 2008. Prior to her departure on maternity leave she was replaced by (ES) whom she trained in on her duties. During the claimant's absence on maternity leave the firm commenced work on obtaining ISO accreditation. This accreditation was very important to the firm in its attempts to pitch for and secure overseas work. As such the firm hired a group of consultants who worked with (ES) with a view to obtaining the ISO quality mark. The respondent printed and produced brochures as part of their pitch for overseas work. (ES), who had a background in the printing business had the necessary skill-set to produce the brochures which was an important element in the firm's pitch for overseas work.

The witness told the Tribunal that he did not receive written notice of the claimant's request for maternity leave prior to her departure on maternity leave. The claimant returned to work from maternity leave in December 2008 but was eventually made redundant in April 2009. He told the Tribunal that the claimant's statutory redundancy payment was calculated at approximately €11,000.00. He only paid her €5,000.00 as he could not afford to pay her the full amount. Economic circumstances forced the firm to make the claimant redundant along with a substantial number of other employees.

Under cross examination the witness stated that ISO accreditation which is about systems and procedures has not yet been obtained. He accepted that when the claimant returned to work from maternity leave in December 2008 (ES) continued doing the majority of her work for some months. (ES) remained working in the claimant's office while she (the claimant) was given a desk in the reception area. When the firm outsourced its finance work to its accountants the claimant's job as an administrator was gone. He confirmed that preparatory work in respect of this outsourcing is now shared between himself, a secretary and (ES). It is not carried out by any one person.

Claimant's Case

The claimant gave direct evidence that she was employed as an administrator by the respondent firm since July 2000. She was responsible for general accounting and administration work. Prior to her departure on maternity leave in February 2008 an advertisement was placed in a local newspaper for an accounts administrator. (ES) was hired as a result of the advertisement and she trained him in his duties. (ES) did her work in her absence on maternity leave and he contacted her on a regular basis on work related issues while she was on maternity leave. She had no difficulty in being contacted while she was on maternity leave.

She told the Tribunal that prior to her departure on maternity leave she worked 4 days per week. She worked 3 full days in the office and 2 mornings from home. The respondent firm was in agreement with this arrangement. On returning to work from maternity leave (MT) told her that she would be working 4 afternoons only per week and this was non negotiable. This had the effect of her hours being reduced from 30 hours per week to 14 hours per week. She returned to work but

did not accept the new conditions imposed and made this known to her employer by way of a letter dated 1 December 2008.

Following her return to work (ES) remained sitting at her desk in her office and she was repositioned to another desk in a different office. (ES) ran the payroll and she was denied access to accounts. This was work she had been doing since 2000. She was given old files to deal with and she found this experience humiliating. (MT) told her that it was a temporary arrangement but (ES) remained doing her work. She was eventually made redundant without any discussion about possible alternative options. She does not know why she was selected for redundancy. Since her dismissal she has applied for a number of jobs but to date has been unsuccessful in her attempts to secure employment.

Under cross examination she confirmed that she was in constant contact with the office while on maternity leave and was aware that some employees had been made redundant. She was not aware that she should have made her application for maternity leave in writing. She accepted that (ES) had the skill-set to print and prepare brochures for the firm. She accepted that (MT) now carries out administration work. She did not know if (ES) had particular expertise with regard to the ISO programme.

The claimant adduced no evidence that she sought to mitigate her losses for in or about the first five months after her employment with the respondent ended and no evidence was adduced regarding efforts to seek employment since February 2010 other than the claimant was registered as a job seeker with FAS.

Determination

The Tribunal carefully considered the evidence adduced at the hearing. The Tribunal finds that the respondent had a genuine need to make redundancies as a result of the economic downturn and a restructuring of the respondent's company. The Tribunal accepts that it may have been more convenient for the respondent to continue to employ ES rather than the claimant. However, the Tribunal was not convinced that the claimant could not have carried out the work now being carried out by ES who replaced her whilst she was on maternity leave. Therefore the Tribunal finds that the claimant was unfairly selected for redundancy and thus was unfairly dismissed.

The Tribunal awards the claimant the sum of €17,896.66 under the Unfair Dismissals Acts 1977 to 2007. The claim under the Redundancy Payments Acts 1967 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

