

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

EMPLOYEE - claimant

CASE NO.

UD1496/09
RP1676/2009

Against

EMPLOYER - respondent

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath BL

Members: Mr R. Murphy
Mr D. Thomas

heard this claim at Naas on 19th July 2010.

Representation:

Claimant: Mr Liam Moloney, Moloney & Company, Solicitors, Unit 5,
Lawlor's Commercial Centre, Naas, Co Kildare

Respondent: Ms Kerry Molyneaux, IBEC, Confederation House, 84/86 Lr. Baggot Street,
Dublin 2

The determination of the Tribunal was as follows:-

At the outset of the hearing the claimant's representative indicated that the claimant was not proceeding with the claim under the Redundancy Payments Acts, 1967 to 2007.

Respondent's Case:

Prior to October 2008 the respondent had eleven companies across six locations. Each company was run independently with its own MD, own staff and resources.

In October 2008 it was agreed to amalgamate these companies into one single entity. A Chief Financial Officer (CFO) was appointed to the company on 13th December 2008 and a Director of

Operations was hired in January 2009.

A management team was created and roles were assigned. The CFO dealt with forecasts, projections and revenue. There were duplications in every area. The Directors and shareholders took pay cuts and every contract was renegotiated.

In the sales area twenty-five redundancies occurred with the restructuring of the sales side. The support departments in the non-sales area, finance, HR, IT and compliance needed to be together and operating from one department.

The CFO completed a strategic plan in March 2009 and the Board ratified this on 20th March 2009. There was a requirement to centralise the operation to Urlingford.

At that time three employees worked in the accounts reconciliation area in Dublin. The claimant was engaged full time in the accounts reconciliation area, LK worked 50% in accounts reconciliation and 50% on premium finance management and the third employee was absent on maternity leave.

As the premium finance role was revenue generating, there was a requirement to have one full time employee working full time in that role. LK was offered the full time role and accepted the offer.

On 3 April 2009 the CFO had a meeting with the claimant. This lasted approximately twenty minutes. He outlined the Board's decision to centralise the accounts department to Urlingford. Her role was being redeployed to Urlingford. The claimant was not being made redundant. She said she was not prepared to relocate to Urlingford. By e-mail dated 24 April 2009 the CFO e-mailed all staff informing them that he was recruiting for new team members in both the Finance and Accounts Reconciliation Teams in Urlingford. Both jobs were based in Urlingford.

During the period April to June 2009 the CFO actively looked for an alternative role for the claimant. He met the claimant two to three times on an ad hoc basis. The claimant was enquiring about her end date on these occasions. Each meeting lasted approximately five minutes. During that time the claimant did not raise any grievance.

As no alternative role could be found for the claimant, and the company waited as long as they could, the CFO communicated with the claimant by e-mail on 10th June 2009 CFO notifying her of her redundancy effective from 30th June 2009. He had never felt that the claimant was disputing her redundancy.

The CFO contended that the respondent tried to be as fair as possible and that it was a fair process. He delayed the claimant's redundancy as long as possible.

Claimant's Case:

The claimant commenced employment in September 2005 initially as a receptionist. She was promoted in April 2007 to Accounts Payable Clerk. The accounts manager trained her in on the job. She worked in the company's Dublin office together with thirty staff.

While she worked in the reception area she had an overview of all areas in the department and felt she could have worked in most areas.

At approximately 4.30 pm on 3rd April 2009 she attended a meeting with the CFO who informed her that she was going to be made redundant. A decision had been made to centralise accounts to Urlingford. Her role was being made redundant. She was in shock that the finance department was moving to Urlingford. She was never offered a role in Urlingford. The CFO told her he would revert to her the following Monday and inform her of her final date. She was told she had about six to eight weeks left in the company. The meeting lasted approximately five minutes.

Prior to being informed of her redundancy LK was offered the premium finance role in Dublin. The claimant was satisfied that she could have carried out this role.

On two to three occasions thereafter she called into the CFO's office and said that she was happy to stay working in Dublin as long as possible.

She did not apply for either of the roles in Urlingford communicated in the CFO's e-mail of 24th April 2009 as she thought they did not apply to her. Nobody ever spoke to her about the role or any opportunities. She had already been told she was being made redundant. She would have taken the job in Urlingford. She had no discussions in relation to alternative roles.

She did not invoke the grievance procedures as it had been made clear to her that she was gone. She felt it was a done deal and that her job was gone.

The claimant has not secured work since the termination of her employment.

Determination:

The Tribunal has carefully considered the evidence adduced. The claimant was called into a meeting on the afternoon of 3rd April 2009 and informed by the CFO of the newly amalgamated group that her job in Dublin was being made redundant. There is a conflict of evidence about whether it was clearly explained to the claimant that her position was being moved to Urlingford. The claimant states the CFO simply stated that the Finance department was being "moved to Urlingford" with no invitation to become part of the team. The CFO states that the claimant was told that her position was open to her in Urlingford should she wish to remain.

The claimant says she would have definitely continued in her employment had she known she could be re-deployed to Urlingford. The CFO states that he understood the claimant was not prepared to do the commute.

It is accepted by both parties that the meeting lasted somewhere between 5 and 15 minutes. It is also accepted by both parties that the next few times the parties met it was on an ad hoc basis whereby a 5-minute discussion would take place regarding when exactly the date of termination would be.

The CFO maintains that these meetings included an element of discussion of the possibility of the retention of the claimant as an employee in some capacity. The claimant denies this. Her understanding was that her position was redundant and that she was "gone". She had no future in the company.

On balance the Tribunal is not inclined to believe that the claimant understood that she could have

become part of the team that was to make up the new Finance department in Urlingford. The onus rested with the CFO to fully explain and communicate to the claimant what the company's restructuring and redeployment programme was. On his own admission the CFO accepted the meetings between the parties were "ad hoc" and brief. The CFO as the employer has the upper hand in such situations. His observation that the claimant was quiet and/or communicative should not be seen as acquiescence. The CFO should have satisfied himself that the claimant had a full grasp of what alternatives were open to her. Against a backdrop of tumultuous change in the group, the CFO failed in his duty to the claimant and her chance of continued employment was not made clear to her.

It is noted that no memos, no minutes, no e-mails and no written confirmation of understanding passed between the parties, and it is as a result of this lack of written evidence that the Tribunal must make a finding on the conflicting oral evidence of the parties.

The claimant accepts that she did receive an e-mail on 24th April 2009 and again on 27th April 2009 advertising various positions to which she believed she was qualified to hold. These positions included finance positions in Urlingford.

Despite being closely questioned by the Tribunal, the claimant cannot satisfactorily explain when she did not consider these positions for herself. In her evidence the claimant maintained that these advertisements did not apply to her as she was considered "gone".

The Tribunal cannot find anything in these internal memos to suggest the claimant was in some way precluded from applying for the positions involved.

In addition, the claimant accepted that she raised no real objections or query to her selection for redundancy whilst the Tribunal has already expressed what it expects of her employer in terms of the information to be made available, the Tribunal cannot overlook the fact that the claimant did nothing to voice any concern or raise any objection and did not invoke the grievance process outlined in the handbook.

On balance the Tribunal has sympathy for the claimant in circumstances where she allowed herself be manoeuvred into accepting that she was being made redundant. The claimant was unfairly selected for redundancy and her claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds. However, in calculating compensation the Tribunal has to take into account that the claimant had every opportunity to challenge the process and she failed to do so. The Tribunal awards the claimant €3000.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)