

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

EMPLOYEE - claimant

CASE NO.

UD1605/09

Against

EMPLOYER - respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath BL

Members: Mr. L. Tobin
Mr C. Ryan

heard this claim at Naas on 26th July 2010.

Representation:

Claimant: Ms Audrey Coen B.L., instructed by John O'Leary & Co, Solicitors, Millennium House, Main Street, Tallaght, Dublin 24

Respondent: Ms Marguerite Ryan BL, instructed by Diarmuid O'Shea & Co, Solicitors, 60 Main Street, Kinsale, Co. Cork

The determination of the Tribunal was as follows:-

Respondent's Case:

The respondent is engaged in manufacturing and supplying an extensive range of pneumatic products to the Irish market. It has offices in Dublin, Kildare and Cork. It has over twenty years experience.

The company was bought by MK in September 2006 following the death of a director. An expansion programme was embarked on.

A decision was made to have a dedicated person looking after purchasing, procurement and logistics. The claimant had been a customer of the respondent and was recruited in February 2007 as a purchasing officer. Desk engineers had previously done their own purchasing and procurement. At that time the respondent was struggling and needed more staff.

The claimant had been a very satisfactory employee.

In 2009 sales began to drop significantly and there was a fall off in orders. Overheads had grown. Certain cutbacks had to be made. Unfortunately, sales did not match overheads. An apprentice engineer was made redundant. A workshop engineer who retired was not replaced.

In the run up to May 2009 the downturn in business was an everyday topic in the company. Employees were aware of the situation. On 20th May 2009 management had a meeting and a decision was made to make the purchasing officer position redundant. Everyone was upset at that meeting. It was decided that purchasing and procurement would revert to Desk Engineers. Later that day the General Manager (BH) together with the claimant's Line Manager (MR) and the Key Accounts Manager (TE) met the claimant. BH informed the claimant that due to the downturn in business her position was being made redundant. The respondent had no redundancy policy in place. The claimant was disappointed but not surprised. She had no technical background for dealing with customers. She acknowledged that the respondent had done their best for her. TE offered to be made redundant in her stead but this was not practical as it was a completely different role. TE had technical expertise. If TE had been made redundant he would have to be replaced. The meeting was not acrimonious. The claimant was given two weeks notice to expire on 3rd June 2009. She only worked the following day and did not work the remainder of her notice period. No alternative position was available for the claimant. A cheque in the sum of €3360.00 in relation to a redundancy payment was not cashed by the claimant but was returned to the respondent.

Claimant's Case:

The claimant commenced employment on 20th February 2007 as a Purchasing Officer in the respondent's Dublin office. She dealt with suppliers and helped out the sales team.

Her role changed when she moved to the Naas office. She also did work for another client (CC). On 20th May 2009 an employee who worked for CC told her there were going to be redundancies announced. She was sure someone of the sales team would be let go. She had been busy that day and noticed that none of the managers were at their desks.

At approximately 4.30 pm on 20th May 2009 BH asked her to attend a meeting. MR and TE were also in attendance. BH told her that they were trying to get an across the board pay cut but MK said he wanted someone gone out of the Naas office. BH said his hands were tied and not to take it as a personal thing. She was told point blank that her job was gone. Her role was being redundant. The claimant contended that she was still doing invoicing and helping the sales team. Up to the notification of her redundancy she had always been told that she was doing a great job and had a great future with the company.

The following day her colleague asked BH if she could job share with the claimant. She was told that this was not option.

The claimant thought she had a future with the company. She had never been told there was a downturn in the company.

The claimant is actively seeking work and has registered with FAS. She has not secured employment since the termination of her employment.

Determination:

The Tribunal is quite satisfied that a genuine redundancy situation existed and that the company facing a downturn in business tried to reduce its overheads by making positions redundant.

It is unfortunate that management did not handle the redundancy meeting with more consideration. However, the fact that the claimant did not know in advance that redundancies were being sought is not fatal to the fact that this is a genuine redundancy situation.

The Tribunal notes that a cheque in respect of the claimant's redundancy entitlement was made, and still is, available to her.

The claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)