

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE

UD867/2009

- appellant

against

EMPLOYER

- respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr E. Murray

Members: Mr. P. Casey
Ms H. Kelleher

heard this claim at Cork on 14th June 2010

Representation:

Claimant(s) : Mr. Kevin Hegarty, Solicitor, Brian Dillon House, Dillons Cross, Cork

Respondent(s) : Mr. Edmond W Cogan, Fitzgerald, Solicitors, 6 Lapps Quay, Cork

This case (Claimant A) was held in conjunction with another claim (Ref: K36182 - UD 866 / 2009) under the Unfair Dismissals Acts, 1977 to 2007 as it involves the same respondent but different claimant (Claimant R). Both claimants were represented by the same representative.

Respondent's Case:

The Managing Director gave evidence on behalf of the respondent company which carry on business as retail opticians with a staff of ten. Throughout 2008 business was in decline. Two of their Suppliers had stopped supplying them and the number of

creditors was increasing. A staff meeting was held, and all staff were informed of the

situation and it was decided to promote a “2 for 1” Sale during January 2009.

Things deteriorated further and the witness was forced to inject €10,000 of his own funds into the Company. The sale went ahead but was not a success and the Company Accountants examined the accounts and advised of further losses and that action had to be taken to keep the company afloat. In February 2009 he held a meeting with his Financial Controller and the auditors. The outcome of this meeting was a decision to put staff on a three day week or alternatively that there would have to be redundancies. He notified the staff of his decision.

The staff contacted him and requested a meeting and faxed a copy of an agenda to him. Upon reading it, it appeared the staff were looking for more money and were concerned with when their hours would go back to normal. He discussed the matter further with his Accountant and it was decided to let the unqualified staff go. At a meeting with the staff he informed them that he had no alternative but to make some staff redundant. He made the decision to make the claimant and Claimant R redundant and later on he made two other staff redundant. He was very upset about this and asked the Financial Controller to inform them the following day.

On cross-examination he stated the claimant and Claimant R were not qualified Opticians but did cover the premises in Grand Parade when he was on leave. He said there had to be a qualified person on the premises at all times. He said that he was not aware that claimant R had qualified in May 2009.

The Financial Controller gave evidence. She explained the financial losses that the respondent was incurring. She spoke to the Managing Director and the Accountant and it was decided to make non-qualified staff redundant. She gave the claimant and Claimant R notice of redundancy on Friday February 6th 2009 and went through the forms with them.

Claimants Cases:

Claimant A (this case):

Claimant A gave evidence. She stated that the November meeting was just like any other monthly meeting. The idea of having a “buy 1 get 1 free” Sale, was briefly discussed. They were not informed the company was in financial difficulty.

On February 3rd the Managing Director and the Financial Controller held a meeting and four staff, including herself and Claimant R and they were informed that they would be put on a three-day week. They were surprised but accepted it. As the day progressed they discussed the matter and felt they had questions for the Managing Director and contacted him to meet them. A meeting was arranged and she prepared an agenda, which she faxed to the Managing Director. She went through the points on the agenda at the meeting and when she reached point four the Managing Director got very irate and put a stop to the meeting. He told them in an aggressive manner that they were not going on a three-day week but that two staff would in fact be made redundant. She felt she knew she was one of them. She stated that she was not a qualified dispenser but had carried out the task and had on occasion been left on the

premises with no optician present. She gave the Managing Director a form to sign for the Department of Social Protection but he would not sign it. The following day she was informed she was to be made redundant. On her final day she requested her P45.

She then gave evidence of loss.

On cross-examination she said that she could not “100% agree” that the company was in financial difficulty but was aware suppliers were no longer supplying stock. She felt that as an alternative to redundancies consideration could have been given to all wages being reduced.

Claimant R (other case):

She told the Tribunal that she was employed as a Sales Dispensary Assistant from 2004. She had trained to become a qualified Dispensing Optician and the respondent had paid for the course. She explained that she had been carrying out the work of a qualified staff member even though she had not qualified yet.

She stated that the November 2008 was a regular meeting. On February 3rd 2009, there was a further meeting. Six staff attended but only four were affected by the possibility of a three-day week. They discussed the situation amongst themselves and decided to call a meeting and compile an agenda for the Managing Director to clarify the situation.

On Thursday February 5th 2009 the Managing Director arrived to work quite agitated. As he went through the items on the agenda, he became more agitated and ultimately banged the table and said two staff would be made redundant. The claimant said that the way he stared at her she knew she was going to be one of them.

The following day she went to the Managing Director to sign some forms for the Department of Social Protection with regard to the three day week, but he would not sign them. Later that day the Financial Controller informed her and Claimant A that they were to be made redundant. She thought that another employee should have been made redundant ahead of her on the basis of her length of service but acknowledged, that this person had superior qualifications to those that she held.

The claimant gave evidence of loss.

Determination:

Having heard and considered the evidence, the Tribunal is unanimously of the view that a genuine Redundancy situation existed in this instance. There had been a sharp downturn in the turnover of the business. This downturn had been discussed at a meeting in November and the claimant acknowledged that she had been aware of difficulties with suppliers. The employer legitimately made the decision to carry on business with fewer employees and unfortunately the Claimants role became

redundant. In the circumstances, the claim under the Unfair Dismissals Act is disallowed.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)