

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
EMPLOYEE – claimant

CASE NO.  
UD887/2009

against  
EMPLOYER – respondent

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Dr A Courell BL

Members: Mr W O'Carroll  
Mr T J Gill

heard this claim at Loughrea on 23rd March 2010 and 10<sup>th</sup> & 11th June 2010

Representation:

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Claimant(s): Mr Alastair Purdy  
Purdy Fitzgerald, Solicitors  
Kiltartan House, Forster Street, Galway

Respondent(s): Mr Brendan Kirwan BL, instructed by:  
Ms Noeleen Meehan  
A & L Goodbody, Solicitors, I.F.S.C., North Wall Quay, Dublin 1

The determination of the Tribunal was as follows:

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

The Senior Vice President for Business Development (VP) of the respondent company gave evidence that the company is a software and services company, a subsidiary of a larger multinational company. The Irish office based in Galway, deals mainly in software licensing, hardware ordering and European support. All the support services for the UK are based in Ireland. The VP is based in the UK but travels to Ireland every month or two.

The claimant commenced her employment with the company in 1997 in the UK. The VP promoted her through the ranks. When the Galway Support Manager left in 2003 he promoted the claimant into the role of Support Director for Irish and UK Support. He worked closely with the claimant.

The claimant was responsible for the software side of the business in Galway. Her duties included dealing with support cases escalated to her, customer service, the computer system, future planning, hiring and training, health and safety and purchasing on approval. She had 'dotted line' approval for HR tasks; she would interact with HR and the VP would approve it. The two support managers under the claimant, one in Galway and one in the UK, were responsible for the staff under them.

Budgeted revenue was down to 44% in January 2009 and it was deemed necessary to shrink the business by 50%. A number of redundancies were made at management level in the UK, in February 2009, before redundancies were made in Ireland in March 2009. A number of UK directors were made redundant, including the UK Managing Director in February 2009 and Deputy Managing Director, so the VP had to step back into the company in a more hands on way.

In November 2008 the VP instructed the then Managing Director (MD) to seek an efficiency review from the claimant. Managers in every part of the business were asked to come back with cost saving suggestions. In her report the claimant noted that the support manager role in Galway was working very well and that:

*'The previously held responsible areas of daily case customer escalation, the major account contacts are now being competently handled by ... in her role of Support Manager UK/IRL while I have been on maternity leave. This part of the role used to be the main daily action item. Therefore, this is an ideal time to re-focus on other productive areas of the business and I would like to steer my current role as Support Director to encompass 5 main areas of efficiency management.'*

Upon reading the review the VP deduced that the claimant had given away a key part of her role. She was seeking new tasks so he presumed that she didn't have enough to do.

On February 26<sup>th</sup> 2009 the management team in Ireland were presented with a discussion document regarding cost savings and efficiencies. The VP wanted everyone to look at how the company did things. Normally call centres have a high attrition rate of staff, but due to the downturn no one was leaving. The document was presented to all staff in Ireland on February 27<sup>th</sup> 2009.

The VP received an email from the claimant on March 4<sup>th</sup> 2009 which included a spreadsheet with eight cost saving suggestions which she estimated to be worth €487, 553. Many of the ideas had already been looked at or taken on board. The VP took four or five of them into account. But none of the proposals delivered the cost savings he was looking for.

The VP went to Galway on March 19<sup>th</sup> 2009 to have a redundancy consultation meeting with the claimant. The Group HR Manager (HRM) also attended to take notes of the meeting. The VP started the meeting by thanking the claimant for her submission. He showed her a PowerPoint presentation, which showed the current organisational chart and then the revised organisational chart resulting from roles being either amalgamated or eliminated. He advised the claimant that her role was at risk.

The company were looking to save €600,000 in the Irish operation. He advised the claimant that she may wish to be considered for any of the roles available and that they would discuss it as part of the consultation process, which was envisaged would end on Friday 17<sup>th</sup> April 2009. He also advised her that there might be new opportunities that would be worth exploring. The claimant was advised that she could go home for the rest of the day or she could stay whilst the presentation was

being made to the rest of the staff. He suggested meeting the claimant again the next day.

Twenty roles were at risk in the Irish operation. The claimant's role was at risk because the VP was looking at which roles would save the company the most money and what impact on the business losing the role would have. The VP saw that the general management side could fall to him. The Support Manager role was not at risk, as it was not seen as a role that should be put at risk. There was no guarantee that the claimant would have taken that role as the basic salary was €60k compared to the claimant's basic of €84k.

At the next meeting he suggested to the claimant to look at creating a new role to look at a new system for the billing process. She said she was willing to look at it. There were no roles available in the Support area. The claimant was advised that she could take time off to attend interviews.

The VP wrote to the claimant on March 23<sup>rd</sup> 2009 and advised her that the decision to make her role redundant was only provisional and that the company would seek to identify ways in which the redundancy could be avoided. He enclosed a list of the company's current vacancies and asked her if she wished to apply for any of the roles. A video conference meeting was arranged for Wednesday 25<sup>th</sup> March.

During the next meeting the claimant was advised that the company only pay statutory redundancy. The claimant could request the calculation of her redundancy payment during the consultation process.

The claimant stated that she had considered the role that could be created but contended that it was not a role she would seek to go into or one that she could create a description for. She did not feel that it would return the investment. The VP stated that it was not necessary for the claimant to justify the role on her own, but that if she was not interested in the role that was different. The claimant stated that she did not see the role as something she could do long term as it was not an operations manager role. . The role is now a real role in the company with the title of Maintenance and Support Manager. The claimant wished to apply for the Support Manager role but she was told that that role was not at risk.

The claimant was invited to a final consultation meeting on Tuesday 31<sup>st</sup> March 2009 at which the details of her termination were discussed. The claimant was issued with six weeks notice and an additional six weeks' pay. She was not expected to work her notice period. The VP asked the claimant to take gardening leave from that day and asked her to hand in her security pass and leave.

The claimant was invited to a final redundancy meeting on Thursday 16<sup>th</sup> April 2009 where she was informed that the company had found no alternatives for her and that her position was being made redundant as of Friday 17<sup>th</sup> April 2009. The claimant was informed of her right of appeal.

A letter confirming the claimant's redundancy was issued on May 1<sup>st</sup> 2009. The VP had no further dealings with the claimant. The claimant's role was not replaced.

During cross-examination the VP stated that the claimant had an excellent employment record. He was unaware that the claimant had cut short her maternity leave to return to work. He notified the Minister for Enterprise, Trade and Employment by letter of March 19<sup>th</sup> 2009 that 20 roles were at risk in the company. He did not recall if he informed the claimant of this in advance.

He did not think that it was unfair to notify the staff that the claimant's role was at risk. The

Galway HR Manager was also consulted that day. He did not have his mind made up, he was open to consultation. He had considered the claimant's proposal for cost reduction, including her offer of a 10% pay cut, but not all her recommendations were suitable. He looked at all the roles in the company and believed he could do without the claimant's role. His plan delivered €650k of savings to the company.

The alternative position, the Maintenance and Support Manager, which the claimant was asked to develop was filled a number of months after the claimant left. It has a salary of £55k. He contended that every position was available to the claimant and that she refused to consult from the beginning of the process. He did not consider the claimant for the Support Manager role as the job was already being performed satisfactorily. He contended that the UK based Managing Director carried out the claimant's role while she was on maternity leave, not the Support Manager.

He decided that the Support Manager role was not at risk when he put his proposal together. He denied that he told the UK Support Manager in January that her role was safe.

He put the claimant on gardening leave as she was upset and he didn't want her in office upsetting herself or other people. There was no way back from gardening leave. It was still during the defined consultation process the claimant had not engaged.

The claimant's appeal was heard on May 8<sup>th</sup> 2009. Letter dated July 7<sup>th</sup> 2009 upheld the decision. The hearer of the appeal did not report to the VP, he had a different reporting line.

The 2004 company document in respect of redundancy policy, which the claimant produced from the company intranet was not approved and was not the current policy. Statutory redundancy was the company policy in place in Ireland.

He denied that the Support Manager had taken on more duties since the claimant left. There was an increased volume, but it was the same work. She does not have 'dotted line' HR authority and the Office Manager reports directly to the VP.

The Chief Financial Officer (CFO) gave evidence that he heard the claimant's appeal. He reports to the CFO in the USA. He knew the claimant from when she worked in the UK. He was not involved with the redundancy process in the UK or Ireland. He had heard appeals from the UK based employees. He became aware that the claimant's position was being made redundant in April 2009, when the VP told him.

He received the claimant's letter in May 2009 outlining her appeal and he sought all the relevant documents from the HRM. He reviewed the documents and spoke to the HRM and the VP about the process and his views on how the consultations had taken place. He came to his conclusion and in July asked the HRM to draft the letter. He had no further involvement in the matter.

During cross-examination the witness contended that it was appropriate for him to hear the appeal. The delay in the response was due to the financial end of year being the 30<sup>th</sup> June for the company. He did not think that it was odd that he asked the HRM, who had been involved in the redundancy process, to draft the letter. He outlined which points he wanted to go into the letter.

The Support Manager for Galway gave evidence that she has been with the company for six years. She became Support Manager in September 2007. She is responsible for her team and their customers, customer escalation and incident management. When the claimant was her manager she

would escalate customer queries to her if necessary. The claimant also ran the office.

While the claimant was on maternity leave the witness reported to the MD in the UK. She was then the most senior manager onsite. If she needed to escalate an issue she would forward it to the MD. When the claimant returned her tasks did not change. She went through her role and job description with the claimant for her efficiency review. Her role is the same as it was when she began in the role. She was not told in January 2009 that her job was safe.

During cross-examination she stated that she was told on March 19<sup>th</sup> 2009 that her role was not at risk, after the claimant's meeting and before the team presentation. She was asked to organise the staff for the meeting. The claimant was not involved in organising the meeting. She was the only employee who was told that their job was not at risk.

She has since become a director of the Irish company. She now has PR approval. The majority of her time is still spent on her original tasks. Purchase approval does not take long to carry out. The claimant's husband still reports to her.

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

The claimant gave evidence that she joined the company in the UK in 1997. She was promoted over the next few years and by 2000 was in a customer service management role. In 2002 the company relocated its customer service division to Galway. The claimant did not initially want to move as her role would have been lower than the one she had, but when the Support Director left the Galway office in 2003 the VP offered her and her husband promotions to go to Galway. The claimant worked hard over the next two years to grow the teams in Galway. In 2006 it was decided to take on a support manager to assist with the growing numbers of staff.

The claimant went on maternity leave from June to November 2008. In the lead up to her leave she worked closely with the Galway based Support Manager to get her up to speed with everything. The day she returned from maternity leave the MD asked her to produce a report on revenue generation. The VP joined the board in December 2008 and the MD was made redundant in January 2009.

The claimant worked with the Support Manager on the review. She asked if she could clarify job descriptions, as she had not received one since she had arrived in Ireland. The MD told her to submit her own, but she wanted to discuss it with him rather than just writing down what she did. She wrote the job description for the support manager role.

On February 26<sup>th</sup> she was asked to prepare another report, which was to focus on costs. The claimant considered that all but two of her suggestions had been implemented albeit in modified forms. The claimant suggested that she would take a pay cut.

The VP came to Galway on March 19<sup>th</sup> 2009. She knew he was coming, but she did not have any prior warning that her job was at risk. The VP and the HRM were present at the meeting. The VP showed her a PowerPoint presentation, which showed that her job was at risk. She was told that they could discuss it the following day. She knew that the Support Manager was going to be told that her job was not at risk.

The next day the claimant met the VP again. She intended to positively discuss whatever options

were open to her. They briefly discussed the Maintenance role, but the VP made it clear that this role would not be a management or operations support role and that it would not have day to day involvement with the teams. It was a more technical role. The claimant did not find this acceptable as she had spent ten years building her career and her forte was dealing with people. She felt a non-people role would take her away from that. She did not believe that this was a viable alternative.

She declined to apply for the roles of HR Administrator, Service Delivery Manager and two Frontline Support roles as they all involved a drop in responsibility and salary. She asked why she couldn't be considered for the Support Manager role. She and the current Support Manager could be reviewed for the role. She believed that would have been fairer. The VP said that the role was not at risk and therefore she could not be considered for it.

The claimant wanted to remain with the company but she felt it was unfair that she had to step away from the area that she had built up and to step away from her people management skills. If management roles were not off limits she could have stayed with the company.

The claimant searched the company intranet to find documentation how the company calculated redundancy payments. She found a 2004 document, which stated that the payment would be in excess of the statutory payment. She notified the VP and HRM of it but the HRM stated that only statutory redundancy would apply. The HRM was not aware of the policy. The next day it was inaccessible on the intranet. The HRM said it was not a valid policy. The claimant found her email where she had confirmed that she was aware of the company procedures.

She was never given the reasons for her selection in writing. She had no involvement in notifying the Minister of the proposed redundancies. She was normally involved with staff changes.

The claimant was happy to work throughout the consultation process and she did not believe that she was upsetting anyone. She was very upset when she was asked to hand over her pass and when the HRM walked her to desk to collect her belongings and then walked her to the door.

The claimant gave evidence of her loss.

During cross-examination the claimant explained that her first report had been aimed at increasing revenue. Her purpose was to re-jig responsibilities so that she would have more time to address revenue generating plans. This was not the same as the role the VP had proposed she flesh out. The VP never discussed that document with her. If he had spoken to her about it she could have clarified what she had meant. The VP told her to look at alternatives but she was not allowed to look at management roles. In regard to the roles she was told she could apply for she did not feel it was appropriate for her to take on a role where she would be reporting to someone who had previously reported to her. She was prepared to take on a more junior role on less pay.

She accepted that redundancies were required in the company. She believed it would have been fairer if she could have applied for the Support Manager role and she would have accepted it if she had not gotten it. If she was successful the Support Manager could have taken on the Technical Account Manager role.

She told them prior to going on gardening leave that she would be making a claim to the Tribunal. She did not know about the internal appeals process at that time.

**Determination:**

The Tribunal accepts that there was a downturn in the business requiring redundancies to be made in both the UK and Ireland. An efficiency review of the Irish business structure was carried out and the decision was made to effect redundancies. The claimant participated in the efficiency review and she accepted that redundancies were necessary.

The Tribunal finds that the redundancy consultation process which was carried out was flawed and procedurally unfair. The method of selection for redundancy was unclear. The redundancy process commenced on the 19<sup>th</sup> March, 2009 and was due to end on the 17<sup>th</sup> April, 2009. It appears that the decision to make the claimant redundant was taken before the process had been completed. From the outset, other employees were informed that the claimant's role was at risk, while the Support Manager was informed that her role was not at risk. When the claimant went on maternity leave the Support Manager took over aspects of her role. The Tribunal accepts that the Support Manager role was a comparable role. The claimant's suggestion that she be given the opportunity to apply for the Support Manager's role was not given proper consideration. Furthermore, on the 31<sup>st</sup> March, 2009, some 14 days into the consultation process the claimant was put on gardening leave which in reality put an end to her position within the respondent company.

Considering all the circumstances of the case the Tribunal determines that the claimant was unfairly selected for redundancy and awards the claimant €86,100.00 (eighty-six thousand, one hundred euro) under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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