

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

EMPLOYEE

– *claimant*

CASE NO.

RP1047/2009

UD927/2009

MN955/2009

WT411/2009

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 C. Egan B.L.

Members: Mr T. Gill
Ms. R. Kerrigan

heard this claim at Castlebar on 3rd March 2010
and 12th May 2010

Representation:

Claimant: Mr Gary Mulchrone Gilvarry & Associates, Solicitors, Unit 9, N5 Business Retail
Park, Moneen Road, Castlebar, Co Mayo

Respondent: Mr Paul Cunney, P. O'Connor & Son, Solicitors, Swinford, Co. Mayo

The determination of the Tribunal was as follows:-

As dismissal was in dispute the claimant gave evidence first.

The claim under Minimum Notice And Terms Of Employment Acts, 1973 to 2005 together with
the claim under the Organisation Of Working Time Act, 1997 were withdrawn from the outset.

Claimant's Case

The claimant was employed as manager of a pottery and arts centre, an old school being refurbished and converted into an arts centre. She commenced employment with the respondent on the 16th January 2006. She dealt with PH, the chairperson. The claimant stated that she understood that the pottery and arts centre was her employer. However, it was brought to her attention that a second party, hereinafter referred to as AB Foundation, owned the building and was backing the project. The claimant's role included managing the accounts. She stated that she would have a number of meetings with PH in this regard. DW, from the AB Foundation, would also request to see the accounts. The claimant stated that she was confused as she was drawing down grants from public monies and that AB Foundation was also contributing to the project. She requested that all instructions to her should issue through PH.

The claimant was contracted to work a 20 hour week, but said that she worked more than that and put a huge amount of effort in to the project overall. She stated that she had a very good relationship with PH, but had experienced some conflict with DW in respect of invasion of her privacy and his demands of her to meet deadlines. She went on to state that DW made it difficult in terms of the funding. She recalled a meeting with the architects in June 2007. Present were the claimant, PH, DW, P'OD, together with the two architects. At this meeting the claimant was trying to clarify the need to keep the €40,000.00 Pobal funding separate from the funding received from the AB Foundation. This €40,000.00 was issued in the name of the respondent and not in the name of the AB Foundation. The relationship between the claimant and DW became tempestuous as DW did not agree with the claimant and re-iterated that €110,000.00 had been provided by the AB Foundation and wished to merge both sources of finance.

In August 2008 the claimant was preparing for the official opening of the arts centre, which was to take place on the 11th September 2008. At this time she was also training a new FAS sponsored employee (HD). This FAS employee was employed as the claimant discussed the workload with PH and explained to him that it was impossible to do all her tasks within a 20-hour week. HD commenced with the respondent in June 2008. The claimant drew up the list of invitees to the opening, including a separate list of public figures. She organised and designed the invitation poster. Catering was required for 150 invitees. She also sourced the public figure who would perform the official opening. As the claimant was going on holidays for one week, she telephoned PH and informed him as to who was going to officially open the arts centre. Prior to going on holiday, the claimant wrote the press releases and advised HD of what needed to be done in her absence. During the course of the telephone conversation, the claimant stated that PH told her that he would "stand behind her" in relation to her preparations for the official opening.

On the 23rd August 2008 the claimant left for France accompanied by her three young children. While waiting to board a train to her final destination, PH telephoned her and asked her if she had mentioned the AB Foundation on the invitations. The claimant told him that she had not, and that she had already cleared that with him and that he had said that he "would stand behind her". The claimant stated that it took her eight hours to get to her destination. Later that evening when she "eventually sat down the days' events started to unravel in her head". She was upset and after three glasses of wine she sent a text message to PH.

Within this text message the claimant appeared to have resigned from her position, PH responded by text saying he would discuss matters on her return. She remembered sending the text but she did not want to resign. She rang the Art Centre three times afterwards while on holidays to check with

HD that all was in order.

After returning from her holidays on Monday the 1st of September 2008 the claimant attended work. HD was there and she checked up on things to be done in relation to the opening. There was a committee meeting on the 5th September, PH could not attend this meeting. Nobody mentioned her resignation. She did not see PH on her return, but HD told her that he had shown her text message to her. She eventually spoke to PH on the phone, and they discussed the official opening.

The claimant met PH on the day of the opening, 11th September 2010. The opening was successful. The AB Foundation had organised a meal in a local hotel afterwards but she could not attend. She was looking forward to working with HD, and gave HD the Friday off. On the Friday 15th October 2008 the claimant was given a letter, informing her that her resignation was accepted with immediate effect. The Management Committee had considered the text she had sent and also in the context of its current and future financials situation. She was shocked, devastated and felt so humiliated in light of what had been said in her praise by PH at the official opening. She thought that the text message had been forgotten about. She gave evidence of loss.

The claimant wrote to the committee attempting to set up a meeting with them in relation to the letter accepting her resignation. This meeting did not take place and she engaged a solicitor who wrote to PH. PH replied directly to her on the 11th November 2008 pointing out that the solicitor's letter was addressed to him personally and not to the chairperson of the committee. The claimant said she was speechless when she received this letter as PH raised a number of issues within. He asked her to recall the times that he advised her to change her approach to business in terms of reporting and her relationship with the core funders. This she took to mean that she was a problematic person but PH had told her he had a problem with the family involved in the AB Foundation. PH raised the issue of her resenting being contacted while on holidays, reminding her that she had contacted him while he was on annual leave. She recalled that she needed to contact him while he was in Turkey as a resident artist had locked her out. When he returned she had apologised profusely to him and in his reply he informed her that they had been worried about her. PH also outlined that she was aware that core funding was not forthcoming after December 2008. The claimant maintained that she had discussed funding and had in fact submitted a further application for funding. He recalled that she was aware of the funding issue and reminded her of a phone call he made to her on 12th September informing her that the core funding would not continue and advising her to use the time left to seek alternative employment. PH added a "PS" to the end of the letter informing her that this was a personal letter and that he would not be advising others of its contents at the time. The claimant contended that she was abused by HD when she returned to work on the 16th October. She had asked to use the main computer but her name had been removed from the system and from the letterheads.

Respondent's case

The first witness for the respondent (hereinafter referred to as DW) was responsible for the distribution of funding from a Foundation in New York to various Mayo based charities/projects. One such project was the one the claimant was employed in.

DW stated that funding was provided at the outset up to the end of December 2008 and that it was expected thereafter that the project would be self-sufficient. The Foundation was not willing to fund the project beyond 2008 and therefore the claimant's job became redundant.

It was put to DW that he did not have a good working relationship with the claimant and that he in fact stopped the funding to the project to get rid of the claimant and allow for another person to be employed in her place. This was vehemently denied by DW. The second witness for the respondent was manager of the project (hereinafter referred to as PH).

PH also referred to the cessation of funding from New York and the consequential inability to continue to employ the claimant beyond end of December 2008. He stated that the claimant had been paid in error for the first two weeks in January 2009 and that her employment had actually ceased on 31st December 2008. PH acknowledged that it was he whom the claimant had sent a text to on 23rd August 2008 stating that she was resigning from her position. PH stated that he did not say that he accepted her resignation and would have encouraged her to continue. However this text message was later discussed by the Board of Management and it was decided to accept her resignation. It was acknowledged that the claimant had returned to work on her return from holidays and when asked if anyone had discussed the text message with her PH replied no.

Determination

Having considered all the evidence and submissions tendered the Tribunal finds that on the balance of probability the claimant was not unfairly dismissed but that a redundancy situation existed at the time of termination of the claimant's employment and the Tribunal awards the claimant a lump sum redundancy payment under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria.

DOB	21 st March 1964
Commencement Date	16 th January 2006
Date notice received	N/A
Termination date	23 rd January 2009
Gross pay	€410.00 per week

This award is made subject to the claimant having been in insurable employment, during the relevant period, in accordance with the Social Welfare Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

