

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE *-claimant*

UD884/2009

RP1002/2009

MN915/2009

Against

EMPLOYER *-respondent*

Under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms S. McNally

Members: Mr D. Hegarty
 Ms. P. Doyle

heard this claim at Cork on 29th April 2010
 and 14th July 2010

Representation:

Claimant: Mr. John Brooks, Brooks & Co., Solicitors, Baldwin Street,
 Mitchelstown, Co. Cork

Respondent: Mr. Cathal Lombard, Eugene Carey & Co., Solicitors, Courthouse Chambers,
 Mallow, Co. Cork

The claim under the Unfair Dismissals Acts, 1977 to 2007 was one of constructive dismissal, accordingly it fell to the claimant to make her case.

Claimant's Case

The claimant gave evidence. She commenced employment in the respondent's Human Resources (HR) department in the UK branch in 2001 and moved over to live there for a period of 4 years. Her manager (SW) was based in Ireland. The claimant dealt with the day-to-day running of the branch including disciplinary, grievance and dismissal issues with staff. After this she moved to Ireland and commuted to the UK branch 3 days a week.

The claimant became pregnant and requested to work part-time hours but there was no position but it was agreed on her return she would work part-time. Her child was born in early July. During her maternity leave she was asked to travel to the UK branch 1 day a week and did go for 1 day in mid August. The following week she was informed the part-time position was no longer viable. In

October 2008 she received a call from SW informing her the company was downsizing and there would be redundancies in the UK.

In January 2009 she returned to work. The following day (14th) SW contacted her and asked would she be able to help out in the sales department. She assumed she would still be helping out in HR in the UK. SW had given her that assumption. She arrived to work on the 15th to find her desk had been removed. Time was scheduled for her training in sales and she was shown the products they dealt in and listened in to some “cold” calls. She observed staff in the HR department working away. It was clear to her she was not needed in the HR department. She was not happy with the move to an entry-level position from a managerial one.

There was no change the following week. She told SW she would speak to the HR manager (CB) but was advised it would do her “no favours”. She explained to the Tribunal that she had seen it in the past what happened if anyone raised any problems. She had had to dismiss an employee who was on probation and had queried if the respondent had a union. She went to see the owner’s son (AR) and told him that her HR position seemed no longer to be there and that she was not suited for telesales. There was a 3-day position in the UK. AR said he understood and told her she could extend her maternity leave and reapply for a position in a year. She said she had no problem going to the UK 3 days a week. She asked was she being considered for redundancy and was told no one wanted to get rid of good staff. She spoke to CB.

She told CB she was not happy in telesales but continued to work there for a further few weeks. On the last day she worked she was asked to perform a task in HR dealing with staff who were being made redundant in HR in Belfast. She felt this was the end of her position in HR. A position in HR in Ireland had not even been discussed with her. She attended her doctor and commenced certified sick leave for work related stress. No one contacted to enquire into her health. She went to her solicitor for advice. She resigned in April.

On cross-examination she stated that she had no contract of employment and when she had raised any grievances in the past all she was met with were shrugged shoulders and was not dealt with. She again reiterated that it had been agreed she would return from maternity leave and work part-time. She said that she had never been told she had been redeployed to carry out sales duties. She was happy to help out in sales when not busy with her HR duties. She was never informed that if the UK took over again it would be run from Ireland. She agreed she had asked was she being considered for redundancy.

Respondent’s Case

The first witness for the respondent (SW) is the HR Manager with the UK branch of the respondent. SW was the claimant’s manager. After an unsuccessful interview for a sales position with the respondent the claimant took up a HR administration position in the UK office. The claimant’s role was one of administration such as managing the clocking machine, handling interview correspondence and logging staff absences. The claimant had no decision making power and SW authorised all HR decisions. While the claimant was on maternity leave she volunteered to do some work on the ongoing redundancies. The claimant was involved in disciplinary matters and did some of the H&S training for the Dublin office.

In 2006 the claimant moved house and requested that she worked in the Irish office 2 days a week. This request was accepted as the respondent had invested a lot in the claimant’s training including a Certificate in Personnel Practice and on the job training for HR Management. The claimant did general administration duties when she worked in the Irish office and worked for HR while in the UK office. The claimant subsequently asked if there was a part-time position available for her. The Board rejected this request and SW informed the claimant of this before the claimant went on

maternity leave. The claimant requested SW keep her updated on HR matters while she was on maternity leave so SW exchanged e-mails with the claimant. There were two meetings scheduled before Christmas to discuss the claimant's return to work but both were cancelled. The meetings were not scheduled for the claimant to 'show off her baby.'

The respondent did not receive written notice of the claimant's return to work on the 13th of January. SW was not in the office the day the claimant returned to work but she rang her to have a general chat. SW informed the claimant that there were duties in the UK office; the UK office had made a number of redundancies in the previous October/November. An extract from a telephone conversation is read into evidence including the claimant stating she had agreed to do some work for the sales department. The claimant was never 'transferred' to the sales department, she only spent one full day there. The claimant returned to work for 14 days; 9 days HR work and 5 days general work. The claimant's desk was in the HR department but while the claimant was training in sales she sat beside a staff member from the sales department to listen to the phone calls.

The claimant's position was not made redundant and she was replaced when she left. The claimant requested a meeting and asked for redundancy but it was explained that her position was not redundant and showed her all the recruiting that was planned for the UK branch of the respondent. The claimant did not inform SW she was not happy with the situation. A position became available as an administration assistant for the HR Ireland department on the 19th of January but the claimant said it would be 'her worst nightmare to move down there.' After SW held the Redundancy meetings in the Belfast office she asked the claimant to hold the appeal meetings. The claimant returned from Belfast and rang in sick to work, SW attempted to contact her by phone but could not get through.

The second witness for the respondent (CB) is the HR Manager for the Irish branch of the respondent. When the claimant worked for two days a week in the Irish office she did not do any HR work for CB. On the 14th of January the first of the Irish Redundancies commenced applying the last in first out principle. Re-deployment is standard within the respondent in order to keep as many people as possible in full-time employment.

The claimant returned to work to the same position and duties as she had before going on maternity leave. On the 19th of January the claimant asked about voluntary redundancy and asked if she could apply, CB said she would check it out and revert to her. CB spoke to the Board of Directors, who decided they did not want to open up voluntary redundancy to the whole company. CB understood from the claimant that she wanted to leave and was looking for a financial package.

A vacancy arose in CB's department but she did not consider the claimant, as it was a junior role with a much lesser salary than the claimant's. The claimant rang in sick on the 2nd of February and again on the 3rd of February then her husband rang to say the claimant would be absent for sometime. CB did not know what was wrong with the claimant until she received the doctor's certificate stating 'work related stress' as her illness. The claimant never invoked the grievance procedure.

CB received the first letter from the claimant's solicitor and replied on the 20th of February requesting a meeting and sent her the grievance procedure. CB wrote to the claimant a further two times but received no response until the claimant's letter of resignation on the 17th of April.

CB does not recall the claimant telling her about a conversation she had with AR. CB did not tell the claimant about unpaid maternity leave or about 're-applying' next year. CB only spoke to the claimant about redundancy it was a short meeting. The claimant was paid through the Irish branch of the respondent but SW was her HR manager and CB was her Personnel manager. CB was

surprised the claimant approached her about redundancy as she was not her manager and the claimant had never worked for her. There was no interchanging or re-deployment between the UK and Irish branch of the respondent.

The third witness for the respondent (GOC) is the UK Sales Department Manager. When the claimant returned from maternity leave she informed GOC that, things were quiet on her side and to let GOC know if she needed her for anything. It was known that the UK branch would recover quickly and work would pick up soon. SW informed GOC that the claimant was fine with working in the sales department temporarily and GOC spoke directly to the claimant about working in the sales department on a temporary basis with a view to returning to HR and again she was fine with the situation. The claimant completed her HR work then any extra time was spent in the sales department. The claimant sat between GOC and another staff member while training in the sales department but this was temporary. The claimant did not spend 2 days making brochure packs they are completed before 9 or after 5. GOC attempted to contact the claimant when she went on sick leave to make sure she was all right. All other staff returning from maternity leave came back to their exact position including GOC.

Determination

The evidence presented to the Tribunal demonstrates that the claimant was competent to be a HR Manager and is happy that the claimant was carrying out the duties of a HR Executive. It is obvious that the business had slowed down so it is unusual that the claimant's request for part-time hours was not considered when it was given to other staff members. The evidence presented shows that all other staff members returned to their exact position from maternity leave. There was no resolution to the situation after the claimant made it known she was unhappy and she felt there was no future for her when she felt she was replaced by her desk being taken on the 19th of January.

Based on the evidence adduced, the Tribunal can understand why the claimant was uncertain about her position as she was refused part-time work, but on her return her full-time position was not available for her however she was refused redundancy. The Tribunal find that the claimant was constructively dismissed therefore the claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds and award her €27,800 as compensation.

The appeal under the Redundancy Payments Acts, 1967 to 2007 must fail, as must the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 as the claimant submitted her resignation to the respondent.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)