

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE

CASE NO.
UD1422/2009
MN1400/2009

- claimant

against
EMPLOYER
under

- respondent

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Ms J. Winters
Mr O. Nulty

heard this claim at Monaghan on 22nd July 2010
and 27th October 2010

Representation:

Claimant: Mr Alan Wilkie, Wilkie & Flanagan, Solicitors, 8 The Hill, Monaghan,
Co. Monaghan

Respondent: Mr. Vincent Turley, Human Resources Services, 1 Black Lane, Latlurcan,
Monaghan

The determination of the Tribunal was as follows:-

Respondent's Case:

The Director and Secretary of the respondent company gave evidence. The respondent was involved in the drapery business and had stores in Monaghan, Dundalk and Cavan. The claimant was employed in administration. In 2006 business was at a high point. The respondent secured the services of a Human Resources Consultant to update their procedures. Job descriptions were compiled and given to all staff. In March 2007 a new branch was opened in Navan. However as the year progressed sales decreased.

In 2008 the situation got worse. The proximity of the shop premises to Northern Ireland had an effect, the high exchange rate and the difference in the Value Added Tax rate. It was decided to reduce prices and they even sold stock tax free leading up to Christmas 2008. The biggest expense incurred by the respondent was the payroll. Part-time staff's hours were also reduced. The situation was discussed with the full-time staff. Meetings were held in December 2008 to discuss the matter. It was decided some staff would have to be made redundant.

On December 11th 2008 he met with the claimant for her annual review. He said that he spoke to her of his fears and concerns for the business going into the New Year. Redundancy was also

mentioned and the idea of relocating the position she carried out to the Dundalk branch where his wife, and co-director, would take over the administration work. He also discussed redundancy with other staff. A second meeting was held with the claimant on December 15th who was shocked to discuss the conversation regarding redundancy. The claimant asked was he serious and he replied yes and outlined why. He again met her on December 18th and 24th. On December 24th he outlined the figures for her redundancy package but she left the piece of paper with the information behind.

On her return to work on January 6th 2009 he met with her to try to get her to sign an RP50 form. The claimant was given eight weeks notice. He again met her on January 15th to try and get her to sign the RP50 form. On January 20th one of the Managers was made redundant. The claimant mentioned to him that she was leaving on January 29th.

On January 29th 2009 he met with the claimant and wished her well. The RP50 form was still unsigned. He told the claimant to get some advice. She returned about an hour later and sat down and typed a letter which stated:

“Please note that I (claimant) do not accept that I am redundant. I wish to conform that I will be remaining in my employment.

You wrote that you are moving the job to Dundalk and while you did not offer an alternative to me, I am willing to travel to Dundalk to continue my employment.

Please therefore confirm that the notice of redundancy given to me is now withdrawn.”

That evening he wrote a reply to her letter and said goodbye to her. It was a very stressful time for everyone. He felt he would hear from the claimant in the near future to finalise her redundancy payment.

The following Monday, February 2nd, he was in the Dundalk branch. He received a call that the claimant had turned up for work. He was very surprised. He drove to the Monaghan branch, went into the office and asked her what she was doing there, as she no longer worked there. She got up from her seat, said goodbye and left. That evening he changed the codes on the computer system as per company policy.

The following day he was again in Dundalk. He rang the Monaghan branch and was informed the claimant had again turned up for work. He was bemused and angry and drove to Monaghan. On entering the office he asked the claimant what she was doing there working on the computer. He again told her she did not work there anymore and had been paid her notice. The tension was very high and the claimant refused to leave. He asked one of his staff to come into the office to witness the conversation. The claimant left.

On February 4th the claimant rang in sick for work. He decided to shut the office down. He left a letter for the claimant in the branch, as he was sure she would turn up again to work. She picked it up the following day.

On cross-examination he explained that the work the claimant had previously carried out was divided between a few people, including himself. Other duties had been electronically modernised. When asked he said that the claimant had not signed a contract but had been given one and a job description. When put to him he said his discussions with the claimant regarding her annual pay review had been delayed. When asked he said he had spoken to other staff concerning redundancy. The claimant had not been given an alternative option.

Claimant’s Case

The claimant was employed as a bookkeeper with the respondent. The claimant's wages and wage increases had always been an issue with the respondent and always a source of friction. As a result of the final 'strenuous' wage increase discussions on Thursday morning the respondent said, 'that's it, there's no money, I'm making you redundant'.

The claimant returned to work the following Monday and immediately asked the respondent if his decision still stood. The respondent informed the claimant that he was serious about making her position redundant. The claimant suggested she could do sales work, a voluntary redundancy plan could be implemented or other cuts could be made. The administration of the respondent was moving to a different town; the claimant offered to travel to the new location for work. The respondent did not accept any of the alternative suggestions and did not offer any of his own.

The respondent requested the claimant sign the redundancy documentation; the claimant refused because she wanted to seek professional advice, as it was not a redundancy situation. The claimant continued to go to work after the respondent's termination date had passed; on three occasions the access codes were changed to prevent her access. On the final occasion the respondent informed the claimant that she was trespassing and he would have to call the Gardaí.

The claimant was aware of the dire financial situation the respondent was in as she completed the monthly accounts. In 2008 the claimant asked for a wage increase on two occasions as agreed with the respondent. The claimant received two months notice of the termination of her employment. The shop manager was also made redundant at the same time as the claimant.

Determination

On hearing all the evidence the Tribunal note that the procedures used in effecting the claimants redundancy were not as fair or transparent as they should have been. However the Tribunal is satisfied that the claimant was dismissed by reason of redundancy, this was a genuine redundancy situation and accordingly the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

By the claimant's own evidence she received her full statutory minimum notice therefore the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)