

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
EMPLOYEE

*-claimant*

CASE NO.  
UD926/2009  
MN954/2009

against  
EMPLOYER

*-respondent*

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms D. Donovan  
Members: Mr J. Hennessy  
Mr F. Dorgan

heard this claim at Waterford on 29th April 2010

#### Representation:

Claimant: Mr. Billy Kyne, Unite The Union,  
Keyser street, Co. Waterford

Respondent: Ms Laurie Burke, Kenny Stephenson  
Chapman, Solicitors, Newtown, Waterford

#### **Respondent's case:**

The Tribunal heard evidence from the owner of the respondent company. She explained that she trained as a nurse in New Zealand. She worked in Australia. She arrived to Ireland in 1998 and worked in Intensive Care. In November 1999 she set up her own business in her house. It was a nursing agency and they contracted nurses out covering the southeastern area. The business had two parts; one was the agency and the other was training in first aid and CPR.

They had twelve employees in the beginning. They gave the employees a contract of employment.

The claimant's role was an administrative role as a training co-ordinator. The claimant was good at her job. She had a good relationship with the claimant.

The witness gave evidence as to the downturn in the company revenue, the salaries and the break-even figures. The business began to decline in October 2008. From December 2008 to April 2009 there was a downturn.

She decreased her own money drawings from the company and this was before staff cutbacks. Her takings decreased by €200.00 per week. In January they did not do the normal pay-rises

r appraisals. On 9<sup>th</sup> February they implemented cutting hours. A letter about this that was sent to the claimant on 4<sup>th</sup> February 2009 was opened to the Tribunal. The letter stated that the claimant's hours would be cut to three days per week. From February to March there was no improvement in the business. She sought Human Resource advice and received advice about the situation.

She advised the claimant, by letter, on 4<sup>th</sup> March 2009 that she was being made redundant. The claimant's job was chosen in that she had to look at the jobs that she had to keep i.e. nursing roles. She looked at each position with the HR person (CF), who was advising her.

The witness outlined all of the staff and their roles and how she regarded the roles in light of the situation. After March 2009 no one was taken on to fill the claimant's role and any administrative queries from the claimant's role were referred to herself.

The claimant was sent a letter to try and explain the redundancy and was requested to meet with the outsourced HR person.

The company ceased trading on 20<sup>th</sup> December 2009. They own another business since January 2009 and that business does not employ anyone except care staff.

The Tribunal heard evidence from the HR person (CF). She and the owner sat down to look at the roles in the company. She knew that the company was making a loss. They decided that the training role should be chosen to be made redundant. Any of the claimant's training functions were to be subsumed into other roles.

**Claimant's case:**

The Tribunal heard evidence from the claimant. She explained that as well as her usual duties she had also cooked and cleaned, it was "all hands on deck". Her duties were "task driven", "task orientated". In 2009 she had a conversation with the owner and the owner told her there would be "no rise". She asked the owner two weeks later and was told "no" and this surprised her.

The claimant outlined her job role and the various functions that she would fulfil. She was not licensed to teach a course and she explained her involvement in that area.

She met the owner, regarding her redundancy, the owner asked her to leave the premises and she was escorted from the premises.

She felt that she could have carried out the duties of two other employees and that those employees and she could all do each other's jobs. Although they could not carry out all her functions as she herself had a licence.

In clarifying points for the Tribunal the claimant explained that she felt that at the time she was unfairly selected for redundancy, that the decline in business led to the other employees' redundancies.

**Determination:**

The Tribunal unanimously determines that the claimant was not unfairly dismissed. A redundancy situation existed and the claimant was paid her redundancy. The claim under the Unfair Dismissals Acts 1977 to 2007, fails.

The respondent agreed that the claimant was not given her statutory minimum notice. The Tribunal awards the claimant the sum of €9,77.64, being two weeks' gross pay in lieu of notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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