

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE
- *appellant*

CASE NO.
UD1462/2009

against the recommendation of the Rights Commissioner in the case of:

EMPLOYER - *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr D. Moore
Mr. J. Dorney

heard this appeal at Dublin on 19th July 2010

Representation:

Appellant: Mr. Brendan Archbold, 12 Alden Drive, Sutton, Dublin 13

Respondent: Ms. Mary Paula Guinness, instructed by respondent

The determination of the Tribunal was as follows:

This case came before the Tribunal by way of an appeal by the employee, appealing against the recommendation of a Rights Commissioner under the Unfair Dismissals Acts 1977 to 2001 ref: *r-073263-ud-08-EH*

Respondent's Case

The respondent company is a medium sized general legal practice dealing in most law except criminal. At the time of the appellant's dismissal there were approximately 35 staff. The Tribunal heard evidence from JOD, who held the position of managing partner.

JOD told the Tribunal that the impact of the economic downturn hit the firm in early 2008. By the end of the first quarter, 30th April, the financial downturn was obvious.

On 28th May 2008, at a partners meeting, it was decided that it was necessary to reduce overheads by making cuts where possible, for example, painting and updating of websites. However, MC, the

financial controller said that these initiatives would not be enough to produce the savings required.

On 10th June 2008 at a partners meeting, an overhead review action plan was presented. As a result of this the financial controller was given a brief to enter into negotiations with existing and new suppliers, with a view to achieving as great as possible reduction and to report back to the partners by the end of the summer.

On 9th July 2008, the partners were updated on the financial position, which was .5million euro behind where it should have been. JOD told the Tribunal that at this stage the firm were hoping to cut costs without effecting jobs but at this stage it was quite evident that there was considerably less business coming in and the firm was on a downward spiral.

On 20th August a “special meeting” was scheduled to look at the review of general overheads. At this meeting the financial controller informed the partners that as a result of renegotiations with suppliers it had been able to achieve a considerable reduction, which would result in an overall saving for the year. However, the point was made that notwithstanding this, the amount to be saved was nowhere near what was required to match the fall in fee income. As a result of this it was agreed that there was a need to identify ways to identify further savings by way of possible redundancies and salary negotiations.

On 2nd October, at a partners meeting, the financial controller presented a review of staff costs and PW presented proposals of how the staff costs savings could be achieved. This included a mixture of salary reductions and selective redundancies.

JOD told the Tribunal that discussion took place about 3 potential redundancies, one in accounts, one secretarial and one full time receptionist. These three areas were selected for the following reasons. The client funds and fees that come through the office had decreased. There was no longer a need for 3 staff in accounts because there was less activity. Therefore, there was a potential redundancy in that area. The same applied to the secretary position because of the significant reduction in the level of activity. In relation to the full time receptionist, it was felt that the firm could get by with a part time receptionist who was also qualified to carry out other roles. The meeting adjourned until 7th October to allow the partners to consider the options.

On 7th October the meeting reconvened at 7:30pm and it was decided that all salaries would be reduced by 15% and the three potential redundancies would be implemented.

On 10th October 2008 an email was sent to all staff requesting their attendance at a brief meeting at 1pm that day. JOD made a statement at the meeting informing staff of the firm’s current financial situation. He told staff that there would be a limited and selective number of redundancies and that all staff would be subject to a salary reduction of 15%. JOD also requested that any staff who were contemplating leaving the firm, for whatever reason, inform the partners of their decision in order to assist everyone in making an informed decision.

JOD told the Tribunal that staff were asked to consider the matters put to them over the weekend and to revert to MC by 1pm the following Monday. The partners felt that it would be unfair to have an air of uncertainty hanging around for any longer than was necessary. JOD was not involved with any of the meetings that MC had with staff. One member of staff informed them that she was pregnant and was thinking of leaving.

MR was chosen as the part time receptionist because she had the accounting skills required to carry

out other duties. She has secretarial and word processing skills. She deals with suppliers and orders. She now operates reception and assists MC in accounts.

JOD and MC arranged to be in the office at 8:00am to inform the staff that had been selected for redundancies of their decision. They had decided to meet with the person from accounts first, then the appellant, then the receptionist. They spoke with the accountant at 8:30am and then looked for the appellant but she was not yet in the office. They then told the receptionist. While they informed the receptionist that she was being made redundant, MR covered the reception desk because the appellant was late. JOD told the Tribunal that at this stage MR had not been informed of her new role.

When the appellant was told that she had been selected for redundancy she enquired as to who was taking over. JOD and MC did not want to tell her because they had not yet informed MR and it was sensitive. The reception desk was situated just outside the meeting being used. JOD told the Tribunal that by Spring 2009 the firm had made four more redundancies and the level of fees being received has reduced.

During cross examination JOD agreed that the secretary chosen for redundancy was chosen on the basis of service and the appellant was made redundant based on her skill level. JOD further confirmed that there was no set criteria applied to the redundancy selection because each role within the firm was looked at and assessed on its own necessity. It was decided that the receptionist needed to be able to carry out other duties and the appellant did not have the accountancy skills that the firm required.

The Tribunal heard evidence from MC, the financial controller, who was involved with meeting the staff who had been selected for redundancy and informing them of same. They first met with the person from accounts. At approximately 8:30am MC left the room to get the appellant but she was not yet in so they met with the receptionist instead. MC asked MR to cover reception. MR was not aware that she would be taking this over on a permanent basis.

At the meeting with the appellant she was offered the rest of the day off. The appellant asked MC and JOD to complete a form for statement of income for a mortgage. MC obliged this request. MC met with the appellant again in the afternoon to sign the form for statement of income. At this meeting they discussed the form and whether or not the appellant would work out the one month's notice.

MC told the Tribunal that himself and the appellant then had what he thought was an informal chat. He asked her if she would consider going to Germany because he was aware that she was engaged to a guy in Germany. MC did not tell the appellant that she was lucky to be single nor was her marital status taken into consideration when selecting her for redundancy. There was nothing further discussed at the meeting except that the appellant agreed to cover the reception for MR's absence for holidays.

During cross-examination, MC told the Tribunal that he did not suggest that the appellant look into getting a job on the airlines in the Middle East. MC confirmed that there were two employees retained by the firm even though they commenced employment after the appellant.

Appellant's Case

The appellant, PW told the Tribunal that she was employed as a receptionist in the respondent's legal firm but also possessed secretarial and accountancy skills. The appellant said these skills were not discussed with her at the time of the redundancies.

The appellant said she was not aware of the criteria being used by the respondent to decide on the redundancies. However, after being made redundant she became aware that somebody had volunteered.

PW told the Tribunal that after the meeting on the 10th October at which JOD made a statement about pending redundancies, herself and a few colleagues went to lunch. When she returned to the office, MR approached her and she was crying. MR told her that she had met with MC and that she was more than likely going to be placed on the reception desk. The appellant said that they could not do that and she went to see MC herself. When she met with MC he gave her a redundancy calculation.

The following Wednesday the appellant arrived for work at 8:45am. She saw MC and JOD jump back from a window. The appellant parked her car and went into the office. She was asked into a meeting straight away and was not afforded time to remove her coat. The appellant was the first to speak and she was then informed that she was being made redundant. She asked about the reception position and was told that this would be taken over by another secretary.

When the appellant returned to her desk MR was sitting there. MR stood up, gave the appellant a hug and apologised for the fact that the appellant was losing her job. The appellant was upset by this.

The appellant attended another meeting that afternoon with MC. At this meeting the MC told the appellant that she was lucky to be free and single with no mortgage and no kids. The appellant felt that these comments were very personal.

The appellant did not work for the first year after her employment ceased with the respondent's firm. She completed a course online in teaching of a foreign language. From late October 2009 to March 2010 the appellant received temp work, and also from 4th April until 18th June 2010.

During cross examination the appellant told the Tribunal that she is familiar with the Dictaphone system used by the respondent's firm but not trained in it. She also confirmed that she is not trained in accounts maintenance. The appellant agreed that it was possible that MR may have surmised that she was one of the employees selected for redundancy because it is a small office.

Determination

The Tribunal determines that the selection process used by the respondent in this case was unfair. The Tribunal has come to this conclusion because there were other secretaries performing the same or a similar function as the claimant, who were retained in employment subsequent to the claimant's dismissal. In evidence given to the Tribunal, witnesses for the respondent failed to indicate that they had given any due consideration to the claimant being retained in the place of these staff with less service.

The Tribunal further determines that the claimant's position would have been redundant in April

2009. In the circumstances, the Tribunal award the claimant the sum of €12,540. The Tribunal also finds that the claimant would have been entitled to receive her redundancy at that time.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)