

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD1734/2009

against

EMPLOYER

Under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal

(Division of Tribunal)

Chairman: Mr N. Russell

Members: Mr J. Browne
Mr F. Dorgan

heard this claim at Wexford on 28th October 2010 and 24th January 2011

Representation:

Claimant : Mr David Byrne, Stone Solicitors, 14 North Main Street, Wexford

Respondent : Mr Eamon Shortall B L instructed by
Redmond & Company, Solicitors, Abbey Square, Enniscorthy, Co. Wexford

The determination of the Tribunal was as follows:

The Tribunal heard evidence that the claimant joined the predecessor company to the Respondent as a human resources assistant in August 2000. The company was completely reorganised in October 2005 and as part of that reorganisation, the Claimant transferred to the respondent.

It was common case that the Respondent and other companies in the group suffered as a result of the economic downturn which ultimately saw the number of employees of the respondent reduced from nine to three. The Claimant was one of those dismissed by way of redundancy.

The Claimant accepted that there was a redundancy in her department at the Respondent Company but was somewhat surprised and very distressed that she was selected. The Tribunal accepts that there was no consultative process and that a reasonable employer would have approached the situation in more considerate and fair manner. Specifically, the Tribunal was satisfied from the evidence given that the Respondent Company:-

- failed to consult or engage in a real or meaningful manner with employees generally in the company on the proposed redundancy scheme
- failed to discuss the actual manner of implementation of redundancies with its employees
- did not consult on any aspect of the proposed redundancy with the Claimant, did not consider options and did not afford the Claimant the opportunity to suggest alternatives.
- Did not give the Claimant any opportunity to appeal the decision to dismiss her.

It was clear from the evidence of the Respondent's financial controller that, rather than engage the Claimant, the Respondent appeared to rely on "the general message out there that there would be more cuts".

The parties disputed whether another individual working with the claimant was in the employ of the Respondent or another Company in the group. While the Respondent claimed that the individual in question was in the employ of that other company and not the Respondent, no documentary evidence was furnished to the Tribunal. The Claimant believed that she had seen documentary evidence that the individual in question was on occasions paid by the respondent. The Claimant's case was that her employer should not simply have dismissed her by way of redundancy but should have consulted with her, advised her of the criteria and applied these evenly in arriving at a decision.

The Respondent's case was that the Claimant's role with the Respondent was filled by the Claimant alone and that it was necessary for this position to be made redundant and the Financial Controller to personally take on the burden of additional duties.

The Tribunal is satisfied that there was a genuine redundancy situation but that the Respondent Company for the reasons stated did not act reasonably or in a fair manner and that accordingly the claimant dismissal was unfair.

The Tribunal in having due regard for the fact that a Redundancy situation did arise in the Respondent Company and that the Claimant received a Redundancy Payment and succeeded in securing an alternative employment albeit on different terms awards the Claimant €4,500.00.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

