

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE

claimant

UD45/2010

Against

EMPLOYER

respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr M. Carr
Mr M. O'Reilly

heard this claim at Dublin on 28th March 2011

Representation:

Claimant(s): Ms. Nicole O'Neill, Glebe Lodge, Monaleen Road, Limerick,
Co. Limerick

Respondent(s): Financial Controller of the respondent

The determination of the Tribunal was as follows:-

Respondent's Case

The financial controller told the Tribunal that due to economic circumstances and a substantial reduction in turnover redundancies had to be implemented in the respondent. A new store opened in Dublin in 2008 and it had substantial reduction in its warehouse space. Four assistant managers were made redundant and approximately ninety staff were made redundant. The claimant was employed as an assistant manager in the Dublin store and this store did not have a manager. The manager in Midleton worked in Dublin two to three days every two weeks. It was not feasible to continue with this arrangement and a new manager was appointed to the Dublin store in March 2009. The respondent did not have a policy of LIFFO and it depended on business requirement. It did not have a manager in its Limerick store. The assistant manager in Galway was let go prior to the claimant being let go.

In cross-examination he could not state exactly when the discussion took place regarding

redundancy. All assistant managers were let go. The manager was the person that earned the most money in the Dublin store. The respondent had to have a manager running the Dublin store to improve sales. The claimant trained the new manager in certain tasks.

The Area Manager told the Tribunal that she oversaw the entire store as well as employees. When HM was appointed as manager in the Dublin store it was not planned that the position of assistant manager might be made redundant. The claimant received an excellent reference and was a brilliant employee. At the time the manager HM was appointed the area manager spoke to all of the Dublin team and she told them she could not guarantee them one hundred per cent that they would not lose their job and they would deal with the issue when it occurred. She did not know HM prior to her joining the company and she had received her CV from another store manager. The respondent was open and honest with its employees. The claimant and all employees were aware of how bad the business was doing. HM brought in a level of experience to the respondent, it was not about getting sales, it was about getting new people in to the store. HM did work in local newspapers and after HM joined the store in Dublin won an award for excellence and obtained advertising in the national press.

In cross-examination she stated she was eight years with the respondent. The claimant was brilliant at his job. She did not offer the claimant the position of manager as she felt he did not want that role. HM hit the ground running when she started and she had undertaken a lot of work with customer service. All employees took a ten per cent pay cut. The issue of hiring a new manager was discussed at senior management level.

Claimant's Case

The first witness on behalf of the claimant DOB told the Tribunal he was employed with the respondent from May 2008 until July 2010. He was a sales assistant and earned €30,000 per annum. The manager in Midleton ceased coming to Dublin after Christmas. Prior to this she came to the Dublin store one afternoon a week and remained until the following lunchtime. As well as his duties the claimant undertook part of the ordering of the product on computer. The claimant organised a plumber and electrician if required and if anything in the shop needed to be done he organised it. The claimant managed the shop most of the time. Employees were informed that a new manager HM had been appointed in Dublin and that the claimant would liaise with HM. They were told that HM could bring business to the respondent. Morale was good in the shop when the claimant was employed and they had targets every day. He was surprised when a new manager was appointed. CM liaised with the claimant and told him he was doing well. The position of new store manager was not advertised. The day the claimant was dismissed he believed the CEO came to the shop. HM called the claimant to her office. There were always rumours about pay cuts and redundancies were inevitable.

In cross-examination he stated that the store in Sligo closed before the Dublin store opened.

The claimant told the Tribunal that he was employed as an assistant manager from April 2008 to May 2009 in the Dublin shop. All managers attended meetings. He undertook all manager duties except attend meetings in Limerick. The first time he heard that a new manager was going to be appointed was approximately a week or two prior to it occurring. HM was a very nice person but she was not a good sales person. HM had worked with another retail business in a customer service role and not in front of shop role. He was surprised when she was hired as he had heard rumours of severe pay cuts. The store in Dublin was doing well and this manager was earning a lot more money than the other employees. She did not generate sales. The first time he became aware

of a new manager was when it was announced at a meeting. If this position was advertised he would have applied for the job. He only heard about a redundancy in Dublin when he was dismissed. HM summoned employees to the office and there was no discussion. He wanted to reassure other employees and he was shocked when he was informed he was going to be made redundant as he felt he was very good at sales. He was gob smacked, he was not offered a pay cut or an alternative in the store or elsewhere. No one else in Dublin was made redundant at this stage.

There were cuts at different levels in the respondent. He had taken a large pay cut in January 2009 and a second pay cut was being introduced.

In cross-examination he stated that the Dublin store was rated four in 2009. He loved the job and he still believed that the respondent had a great product range. Employees received a commitment from the CEO regarding sales.

Determination

Having heard all the evidence the Tribunal is of the view that there was a genuine redundancy. However the manner in which the employer dealt with the matter was somewhat deficient and consequently in view of that the Tribunal awards the claimant the sum of €2,491.88 under the Unfair Dismissals Acts, 1977 to 2007

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

