

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE - *claimant*

CASE NO.
UD2597/2009

against
EMPLOYER - *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms J. McGovern B.L.

Members: Mr. N. Ormond
Ms. N. Greene

heard this claim at Dublin on 23rd March 2011

Representation:

Claimant(s) : Mr. Frank Drumm BL instructed by Ms Liz MacGinley, McKeever Rowan,
Solicitors, 5 Harbourmaster Place, IFSC, Dublin 1

Respondent(s) Ms. Rosemary Mallon BL instructed by Conor B Cahill, Sheehan & Company,
Solicitors, 1 Clare Street, Dublin 2

Respondent's Case

The respondent organisation operates four hotels within the Dublin region employing approximately 300 employees. The respondent's group general manager known as (MC) gave evidence that they had experienced a significant downturn in business due to the general downturn in the economy. By November 2008 accommodation bookings had fallen by 28% and bar & restaurant business had fallen by 21%. There was also a reduction in banqueting bookings. As a result of the reduction in business it was necessary to reduce costs and, as a part of that process it was necessary to make a number of employees redundant. The company made 10 employees redundant, 5 on a voluntary basis and 5 on a compulsory basis and all were paid statutory redundancy. Applications for voluntary redundancy were advertised internally on notice boards within the hotel. The Human Resources department dealt with the redundancies and the witness had no involvement in that process.

The next witness (DB) gave evidence that he was operations manager for the respondent company in May 2009. He is no longer an employee having left the company in September 2009. The claimant who was employed as duty manager had been on maternity leave and returned to work on

27 May 2009. The claimant was one of three duty managers and had longer service than her two colleagues. On the morning that the claimant returned to work he had a general conversation with her during which they spoke about the proposed redundancies that were being implemented within the hotel group. The claimant indicated to him that she may accept an offer of voluntary redundancy if it was made to her. He could not recall if he conveyed this information to the respondent's hotel manager known as (DF). He finished his shift at 3pm and, on his way home he received a telephone call from the claimant informing him that she had been made redundant. The claimant did not suggest to him that she was unhappy to have been made redundant. She also called to the hotel on a number of occasions after being made redundant and did not express any unhappiness at being made redundant. He confirmed that the claimant had reported to him in the workplace and she was a good worker. He had no involvement in the decision to make the claimant redundant and was not aware of the selection criteria used by the respondent in the redundancy process. He confirmed that employees had transferred between the four hotels within the group during his time working for the respondent.

The next witness (DF) gave evidence that he is the general manager of the respondent company. He gave evidence that he was informed by the previous witness, (DB), that the claimant would be happy to accept voluntary redundancy if it was offered to her. He was told that on the morning of 27 May 2009 and he met with the claimant at 3pm later that day along with an employee from the Human resources department. The claimant was offered redundancy at that meeting and she was happy to accept the offer. He gave evidence that the claimant stated at the meeting that she would have come looking for redundancy if it had not been offered to her. The company was overstaffed following the claimant's return to work from maternity leave. He accepted that an advertisement had been placed on jobs.ie website in June 2009 inviting applications for the position of duty manager in the hotel. He could not explain why this advertisement was placed and confirmed that no appointment was made as a result of this advertisement.

Under cross examination he could recall telling the claimant at the meeting on 27 May 2009 that the company had to let her go as they did not have a job for her. He was not aware that she had been rostered for work in other hotels within the respondent group. He confirmed that he did not enquire from the other duty managers if they wanted to avail of voluntary redundancy. He did not speak to the duty managers collectively. He confirmed that the decision that a redundancy situation existed was made on the morning of 27 May 2009 and the claimant was offered voluntary redundancy at 3 pm later that day.

Claimant's Case

The claimant gave direct evidence that she commenced working as a duty manager for the respondent company on 3 October 2005. She reported to the operations manager and the general manager. She enjoyed a good working relationship with the respondent company. On 27 May 2009 she returned to work following an absence on maternity leave. She had a general conversation with (DB) on the morning of 27 May 2009 and they spoke about possible redundancies due to the downturn in business. This was a friendly private conversation. Later that day she received a phone call from (C) in the human resources department seeking to arrange a meeting for 3pm. She was not told of the nature of that meeting. She attended the meeting and (DF) was also in attendance. She was told of the changes that had occurred while she was on maternity leave and the fact that business was down. (C) then told her that she was being made redundant as there was no longer a job for her. She was not offered voluntary redundancy and the meeting lasted no longer than a couple of minutes. She was not offered any alternative to redundancy. She was not offered work in the other hotels within the respondent group of hotels. The following day she telephoned (C)

seeking written confirmation as to why she was selected for redundancy. She received a letter stating that her position had been made redundant due to a downturn in business. Since the termination of her employment she has registered with FAS and jobs.ie seeking alternative work. She is in receipt of job seekers allowance and is currently unemployed.

Under cross examination she agreed that she informed (DB) that she may accept an offer of voluntary redundancy if it was made to her. This was in the context of a private general conversation she had with (DB) on the morning of 27 May 2009. She did not express complaints about being made redundant as it is not in her personality but she did enquire as to why she was selected for redundancy. She did not receive an explanation. She confirmed that she telephoned (DB) on the evening of 27 May 2009 informing him that she had been made redundant. She had to move forward with her life. She denied that she was offered redundancy but was told that she was being made redundant. She accepted that she had been offered employment by (DB) in a hotel in elsewhere in the Dublin region since the termination of her employment with the respondent. She could not accept this offer as it involved weekend work and was located a long distance from her home.

Determination

The Tribunal considered the evidence adduced by both parties. There was a clear conflict of evidence between the parties as to whether the claimant elected to take voluntary redundancy or was made redundant by the respondent. The Tribunal prefers the claimant's evidence and feels that there was not a voluntary redundancy situation. The Tribunal finds that the claimant was unfairly dismissed within the terms of the legislation and awards the claimant the sum of €35,000.00 under the Unfair Dismissals Acts 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

