

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

UD2349/2009

against  
EMPLOYER  
under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

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 8th February 2011

Representation:

Claimant: Mr Sean Ormonde, Employment Matters, 4 Canada Street, Waterford

Respondent: Ronan Daly Jermyn, Solicitors, 12 South Mall, Cork

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

The financial controller for the respondent gave evidence in respect of circumstances surrounding the termination of the claimant's employment. It had been decided that the company needed to make a number of people redundant in order to affect cost cutting measures due to financial difficulties.

The accounts section was identified as being over staffed and it was decided that the claimant's job could be subsumed into that of the Financial Controller. There were three people employed in the accounts section and they were the Financial Controller, a Senior Administrator (the claimant) and a Junior Administrator. A breakdown of the duties of the claimant was submitted to the Tribunal and the witness stated that these duties differed significantly from that of the Junior Administrator. Among other things the witness stated that the claimant had sometimes covered the job of the previous Financial Controller when he had not been present.

The witness stated that the claimant was informed that her job was to be made redundant and that she was given an opportunity to suggest any alternatives to her being let go. However the claimant did not make any suggestions as to alternatives and the witness denied that the claimant had offered to take a pay cut.

Four weeks notice was given to the claimant but after two weeks had expired the witness informed the claimant that it would not be necessary to work the remaining two weeks and that she would be paid in lieu of this.

### **Claimant's case**

The claimant stated there she was one of two administrators within the accounts section and that both of them did the same job. Furthermore the claimant denied that she had ever stepped up to do the job of Financial Controller and stated that she was not qualified to do so. The claimant stated that her terms and conditions of employment were the same as the other administrator and that they were both classed as administrators and not Junior and Senior Administrators.

Having been informed that she was to be made redundant the claimant offered to take a pay cut which would have brought her wages in line with the other administrator. She also told the respondent that she was willing to do any job within the Finance Section. The claimant told the Tribunal that she was not aware that she had to make alternative suggestions to the respondent.

It was the contention of the claimant that "Last In First Out" should have applied and that as she was the longer serving administrator she should not have been made redundant and was therefore unfairly dismissed by virtue of unfair selection for redundancy.

### **Determination**

Having carefully considered the evidence adduced at the hearing the Tribunal accepts that the respondent needed to introduce cost cutting measures and as a result took a decision to make one of two Accounts Administrators redundant. The Tribunal finds that the work carried out by the claimant and the other staff member in the accounts section was similar and interchangeable. The Tribunal noted that the claimant could carry out the duties of the other administrator, that the claimant had been employed for a significantly longer period and that the claimant had indicated to the respondent that she was prepared to take a reduction in salary of €100 per week which meant that the claimant was prepared to work for the same salary as the other administrator. In the circumstances the Tribunal finds that the claimant was unfairly selected for redundancy. Therefore, the claim under the *Unfair Dismissals Acts 1977 to 2007* succeeds. The Tribunal awards the claimant the sum of €39,017.99.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

