

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE – *claimant*

CASE NO.
UD1949/2009

Against

EMPLOYER – *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr C Corcoran BL

Members: Mr R Murphy
Mr J Maher

heard this claim at Drogheda on 20th December 2010 and 9th March 2011

Representation:

Claimant(s): Nuala O'Donoghue BL, instructed by:
Chynel Phelan Solicitor
Phelan Branigan, Solicitors
Distillery House, Dyer Street, Drogheda, Co Louth

Respondent(s): Muireann McEnery
Peninsula Business Services (Ireland) Limited
Unit 3, Ground Floor, Block S, East Point Business Park, Dublin 3

The determination of the Tribunal was as follows:

Respondent's Case:

The Managing Director (MD) of the respondent company gave evidence that he previously worked in the company as the Shop Manager specialising in the plumbing, floors and doors. Another manager ran the yard. It was a family run business. He left the company in 2006 and returned in August 2008 as MD after a buyout of another shareholder. He was responsible for all staff scheduling and leave.

In 2008 business was down by 20%. He had to make salary cuts in order to make bank repayments. Around the time of the takeover a number of employees who left were not replaced. Some other employees had their hours reduced. The Credit Controller was made redundant and not replaced until 2010.

Since the claimant was made redundant two new employees have been hired. An employee was recruited in May or June 2009 when MD upgraded a product line and expanded the household department and opened a garden centre. He did not offer the claimant the position as he understood that she was already in work at a swimming pool. A part-time employee was taken on to replace the credit controller who left previously.

The claimant was employed as Retail and Stock Control Manager. She covered the front of shop dealing with returns, goods in and staff rostering. The MD dealt with the back of the shop which was the trade area.

The claimant went on maternity leave in September 2005 and returned in January 2006. A temporary employee was taken on to cover her leave for four months. She was kept on in an IT role for a further year. This employee did not cover the shop floor but rather the claimant's computer duties. He approached the same employee prior to taking over in August 2008 and discussed an IT and Marketing Manager role with her. He wanted to change the bar-coding system used in the shop which involved changing all the departments in the shop. He did not consider that the claimant was qualified to do this.

The claimant went on her second period of maternity leave in August 2008. She notified him that she would return on Wednesday March 18th 2009. He called her to a meeting on the day she returned in order to discuss her position. The claimant refused to accept that she was being made redundant and asked why she had been chosen. He explained that her position had been chosen. He could cover most of her role. Other staff members took on parts of her role. He explained that the new employee was employed in an IT role. The claimant left the premises and did not say whether she was going to work the two week notice period. He didn't recall if the claimant had been given an opportunity to appeal the decision. She was not offered retraining. The claimant cashed the redundancy cheque but didn't return the RP50 form.

During cross-examination the MD stated that he and the claimant had previously worked alongside each other. They had to agree between themselves who did what. He disagreed that he was resistant to changes that the claimant wanted to implement. He denied that he undermined her in front of others. He agreed that there was some tension between the claimant and the employee who covered her maternity leave on the claimant's return in 2006 as the employee had moved into the claimant's office.

He took over a week before the claimant went on maternity leave in August 2008. He didn't recall what he discussed with her before she left. He agreed that he took a sign off her door which read 'sales representatives by appointment only' as he disagreed with her policy. He didn't recall if he had asked her why her desk was locked. He denied telling her to get a sick note for the week between him taking over and the start of her maternity leave. He denied saying that she could clean out her desk immediately when the claimant said she would come back during the week to do it.

The IT and Marketing Manager was hired the following week, but not to cover the claimant's role. It was a new position. They produced their own brochures which this employee oversaw.

He waited until the end of the claimant's maternity leave to make her redundant as he felt it would be unfair to do it sooner. He didn't take notes at the meeting with the claimant. He didn't offer alternative positions. He didn't consider another role for the claimant as he knew there wasn't one. He asked the claimant if she saw herself fitting into the company. The claimant made it clear that

she wasn't accepting the redundancy and that she believed that the IT and Marketing Manager had taken over her role. He didn't offer the claimant either of the two roles that were filled after her dismissal. He didn't think she would be interested.

On re-examination the MD confirmed that the claimant was not notified of any jobs on offer while on maternity leave.

Claimant's case:

The claimant confirmed that she was employed as Retail and Stock Control Manager with the respondent. The MD at the time, the current MD's brother, hired her. The current MD was the Retail Manager at the time. The claimant took on a new stock control position and she was to implement new procedures. There were loose practices and the claimant had to restrict access to the system. Suppliers came whenever they liked and would chat to staff and offer them gifts to buy more stock. The claimant stopped this practice and asked suppliers to make appointments going forward. The claimant also stopped staff placing orders directly and they now had to go through her. She felt the current MD was not happy that his brother had hired her and she got no support from him.

When the claimant attended the Christmas party in 2005, the MD continuously made smart remarks about her being the "eyes and ears" of the MD. The comments went on the whole night, for example "give cheque to claimant she's the boss now". While the claimant was on maternity leave an employee was taken on to cover her. The claimant returned in February 06. When she returned she had a meeting with the MD. They discussed various practices. He said he thought it was a good idea to keep both the new employee and herself as it would free up her time on other issues, for example, tighter controls. She did not get on well with the new employee. If the current MD and the new employee were in the office together the MD would walk out when she walked in. On the Friday of the Christmas party, the shop was closed and no-one phoned to tell her. The MD left in May 06 and the new employee in September 06.

In August 2008 on the Friday before the claimant was due to go on Maternity Leave, the previous MD called her in to explain that he had sold the business and that the new company was taking over that evening. The claimant got a call from the current MD the next day who asked her to come in with the codes for the company. When she arrived, the MD sat at her desk and asked her for codes and log-ins and for the keys to her desk. It was locked as she had price lists and wage slips in the drawer. The claimant was told he had tried to get into her desk. He took down the sign "suppliers by appointment only". He explained that he had bought the company and that under the re-structuring her role would change. The claimant said she could not comment until she knew the details. He said there was no need to wait till Friday that she should get a doctor's note. She refused to do this. He said to take the week with pay. The claimant believed he wanted her out quickly. She offered him the staff roster/the sheet about suppliers but he didn't want it. She told him she would be in for the stock control and that she had a week of work for handovers. He did not ask what the claimant was working on. He told her he would ring Monday. The claimant said she would be in to tidy her office. The MD said there was no need. He then left and she had to clear desk and pack. The claimant was eight months pregnant at the time and had to ask staff to help her carry bags. The MD did not phone her the following week. She attended the doctor on the Monday as she had been told to get a sick note. Her doctor said it was a stressful environment and she would be better off not to go back. She got a medical cert on Monday.

The claimant did not believe her maternity leave was going to be covered but she heard from staff

two weeks later that the new employee covered her. She was talking to staff and was told she was doing exactly what the claimant had been doing and she was also doing stock take. The claimant believed she wouldn't be returning to work.

At a retirement party the MD ignored her completely. The claimant said hello to him three times and he blanked her. On 13th January 2009 the claimant wrote a letter to return on 18th March 09. She received a reply on 23rd January stating that she was to attend a meeting at 8am on her return on 18th March 2009. The claimant came to the conclusion that she would be let go.

The MD and the Financial Controller (FC) were present at the meeting on 18th March 2009. They did not take notes and they did not have a pen. The claimant took notes as the meeting went along. The FC did the talking. She explained that business had deteriorated and the claimant's role was redundant. The claimant asked how that could be as the new employee was at her desk. She was told that it was a different job. The claimant said she did not believe that was true. He explained that it was marketing and IT related. Previously the company had an outside consulting company to refer to when there was an IT problem. The claimant would ring them and they would talk her through rectifying a problem. As regards marketing, the claimant used marketing every day through merchandising – she did that work along with the staff in the shop.

During the meeting the claimant asked for the minutes of any meeting that took place regarding Redundancy and the criteria used for selection. The MD told her there was no meeting – he just knew it was her. The claimant listed the various jobs she was responsible for and asked who was now doing each job. She was told the MD was doing them and it was denied that the new employee was carrying out any of her previous duties. The claimant knew the new employee had been doing some of her previous duties. When she asked for clarification as to what marketing was being done by the employee, she was told general duties, general advertising. The claimant never saw any adverts and when she was asked what advertisements they were referring to, the MD said it had nothing to do with her. The FC asked her what role she saw for herself and she stated she would take her job back, which had been given to the new employee. The claimant was asked did she see herself fitting in anywhere else and she did not answer as she did not know. She asked what Redundancy package was being offered and was told, it was statutory. She was told not to work her notice and that there was no physical place for her. There was no discussion at the meeting about what she would do for the two weeks. She was told she could get a reference.

The claimant wrote to the MD on 24th March 2009 to request a reference and stated that the incorrect date was on her P45. She asked for that to be rectified plus her two days pay she was left short. On 30th March the claimant received a reply from one of the Director's. The claimant gave evidence that her total loss is €22,482 Gross.

In relation to the list of duties of the new employee, the claimant confirmed that there was nothing on the list that she could not do. The claimant did not accept her list of duties as outlined by the respondent, as this was not the full list of duties carried out by her. She also dealt with merchandising, HR, stock control. She was the Manager of the whole shop. There was no division.

During cross-examination it was put to the claimant that there were clearly two separate roles as she had worked with the new employee for a number of months. The claimant confirmed that she worked with the new employee and that when the MD left her role had changed. When it was put to the claimant that the new employee had more qualifications than the claimant, she said she was unaware of what qualifications the new employee had. The new employee's CV was

handed to claimant and she accepted that the new employee had extensive qualifications. It was also accepted by claimant that her role had evolved. It was put to the claimant that the new employee could save the company money as it cost €135 per hour regarding IT call outs. The claimant stated that they did not call out “Intact” very often, only about three times a year. She understood that it would have benefited her to have the new employee there. The claimant confirmed that she overlapped with the new employee for a 6-month period.

The claimant denied that she was paranoid. With regard to the sign being taken down, it was put to claimant that the MD preferred to work directly with Sales Reps and that’s why he took down the sign. The claimant stated that he did not communicate that to her and that she believed it was a show of authority. The claimant confirmed that she went on sick leave as this is what she was told to do.

The claimant confirmed that she received €5,280 redundancy payment. She took the redundancy as she was unemployed and she had not yet decided that she was going to pursue a claim.

Determination

The Tribunal carefully considered the evidence adduced. The Tribunal feel the respondent was incorrect in the manner in which the claimant was treated. In particular, the inappropriate level of consultation.

The Tribunal makes a determination of an award of €10,000 to the employee under the Unfair Dismissal Acts, 1977 to 2007. This is in addition to the redundancy payment already paid.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)