

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

UD1590/2009

against

EMPLOYER

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Dr. A. Courell B.L.

Members: Mr. P. Pierson  
Ms. H. Henry

heard this claim at Roscommon on 7th December 2010 and 22nd March 2011

Representation:

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Claimant:

Mr Alastair Purdy, Purdy Fitzgerald, Solicitors, Kiltartan House, Forster Street, Galway

Respondent:

Callan Tansey, Solicitors, Crescent House, Boyle, Co. Roscommon

The determination of the Tribunal was as follows:-

#### **Respondent's Case**

(CC) witness for the respondent gave evidence that he is a partner in the respondent's law firm since 2001. He outlined to the Tribunal the nature of a merger of two law firms leading to the respondent's new practice in May 2008. The merger led to a larger more streamlined practice with two offices in the North West of the country containing 6 partners. The practice had a number of departments including litigation, property, probate/conveyancing and was served by one I.T. department. The Tribunal heard evidence that the probate/conveyancing department was seriously affected by the down turn in the economy. All staff were aware that the volume of conveyancing had dropped substantially and in February 2009 three employees were selected for redundancy one of whom was the claimant. In November 2008 a receptionist (AF), was promoted to a position of legal executive in the probate area. She had over 20 years of experience with the company as a receptionist. The commercial litigation area and medical negligence area of the practice had both expanded and a result of this expansion the firm advertised for a position in the medical negligence area. This position required a person of experience in that area and the firm sought to recruit a person from outside the practice.

Under cross examination the witness confirmed that one of the employees made redundant worked in general litigation. The claimant worked in the probate/conveyancing department and was selected for redundancy as she was the newest recruit in that area. He told the Tribunal that the firm had more than enough people for the amount of work involved in the probate/conveyancing department. He confirmed that (AF) was replaced by a full time receptionist following her promotion to the position of legal executive. He informed the claimant at a meeting on 6 February 2009 that her position was being made redundant. The claimant became very upset when she was informed of this and the meeting concluded very quickly. He accepted that he did not tell her beforehand that her position was at risk and did not discuss any possible alternatives with her. A further meeting took place on 10 February 2009 but the claimant was again very upset and it was not possible to have a rational conversation with her because of her disposition. She was not offered the opportunity of having a representative present with her at the meetings on 6 and 10 February 2009. She was not afforded the opportunity of appealing the decision to make her redundant. It was the firm's position that the claimant could have remained in work until the end of March 2009 but the claimant left of her own volition on 11 February 2009. The witness further confirmed that a trainee solicitor (DOM) was not considered for redundancy as he worked exclusively in the area of medical negligence and the entire period of his apprenticeship was carried out in that department.

In response to questions from the Tribunal he confirmed that no solicitor with less service than the claimant was retained in employment. The decision to make the three employees redundant was made collectively by the partners in the firm.

### **Claimant's case**

The claimant began as an apprentice solicitor with the respondent in April 2005 and after having completed a course in Blackhall Place began to carry out mostly probate and conveyance work with the respondent. Her job comprised approximately 75% probate, 15% to 20% conveyance and a small amount of family law and litigation. The claimant was kept on having qualified as a solicitor in August 2008. After this the claimant did mostly probate and a new employee (CH) took over conveyance.

Towards the end of 2008 an assessment was carried out on the claimant and she requested a meeting with CC for the purpose of agreeing fee targets. A meeting took place during the 2<sup>nd</sup> week of December 2008 and targets were loosely agreed.

Late in the afternoon of 6<sup>th</sup> February 2009 the claimant received a phone call from CC requesting her to call to his office. When the claimant called to CC's office he informed her that there was no more work for her and she was given six weeks notice of redundancy. The claimant was stunned by this and asked about other junior staff, support staff and whether staff had to be re-deployed to Sligo. This meeting went on for fifteen minutes and the claimant was very upset. She got up to leave and CC shouted at her and said that it was not a redundancy and was not covered by the acts. No alternatives were discussed and the claimant denied having engaged in behaviour that upset her colleagues. CC told the claimant that they did not want someone angry in the office and agreed to pay the claimant in lieu of notice. The claimant wrote letters on her own behalf to clients informing them that she would no longer be dealing with them and referred in particular to an elderly client whom she did not want to be upset by the claimant leaving. These letters were placed on file.

The claimant met with CC on 6<sup>th</sup> and 10<sup>th</sup> of February. While the claimant admitted she was tearful,

she maintained that there had been no behaviour that would have prevented discussion. On the following Tuesday the claimant met with CC and BG. Another existing employee was brought in to work on the probate files and the claimant was told that the respondent was hiring a litigation solicitor. The claimant asked “why not me” and was told that she did not have the experience. She subsequently found out that a medical negligence solicitor was hired but left and another solicitor, with less experience than the claimant, was hired.

During the meetings with CC and BG the claimant considered that she was appealing the decision to make her redundant but they were intransigent. The claimant was also refused a basic written reference and told that any potential employer could ring the respondent.

### **Determination**

The Tribunal is satisfied that the respondent perceived that a genuine redundancy situation existed due to the downturn in fee income and the merger and saw no evidence of a cover up as alleged by the claimant. However the Tribunal finds that there were no discussions in relation to alternatives such as voluntary redundancy, part time working, retraining or reduction in wages. Furthermore, the dismissal procedure invoked by the respondent was procedurally flawed.

Therefore the Tribunal finds that the claimant was unfairly dismissed and in all the circumstances awards her €18,000.00, this being a fair and equitable award. The Tribunal is cognitive of the fact that the claimant already received certain payment and this award is over and above and in addition to any such payment.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

