

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE
- *claimant*

CASE NO.
UD2041/2009

against

EMPLOYER
- *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Lucey

Members: Mr G. Andrews
Mr F. Dorgan

heard this claim at Limerick on 12th May 2011

Representation:

Claimant: Mr Michael Kiely, SIPTU 4 Church Street, St John's Square, Limerick

Respondent: Mr Bob Mc Ardle, Patrick J Durcan & Co, Solicitors, Westport, Co. Mayo

The determination of the Tribunal was as follows:

Background

The claimant maintained she was unfairly selected for redundancy. She commenced employment in July 2006 for an oil company (A). The respondent acquired company A in December 2007 and the claimant continued to work for the respondent in the Limerick office. The claimant was given a choice of a new contract or redundancy in June 2009. The claimant was made redundant on the 20th July 2009.

Respondents Case

The manager of their Limerick operation gave direct sworn evidence on behalf of the respondent. He commenced with the respondent in Galway in September 2007 and moved to the Limerick office in December 2007. Before they took over company A the administration system in Limerick was manually based. They introduced a computer-based system for fuel cards, credit sales, lubricants, stock control, wages etc. Then some of these aspects including fuel cards, invoices, wages, stock control, purchasing and primarily credit sales were centralised to the respondents Galway base. The lubricant oil and stock control was moved to Loughrea.

He manages the operation in Limerick and when he commenced there were two full-time and one part-time administrator based here. Once aspects of the business were centralised to Galway there was not enough work in Limerick for the administration employees. He also picked up some of their work in Limerick. The office supervisor was made redundant, as there was no requirement for her as his role subsumed this position. The claimant in her T1A stated that J from the respondent's office in Galway was sent to Limerick in to cover for the part-time girl from 8th to 12th June 2009. This witness explained he first met J in the Limerick office. J does general administration including accounts collection, and managing and stocking lubricants for the whole group. She works in Limerick, Galway Ennis and Loughrea and covers a large number of areas. Work is brought to J from other areas to the Limerick office. The claimant's job is now mostly being done in Galway and parts of it are done by him and J.

The redundancy of the claimant in this case was applicable, as her role had diminished; the overall numbers employed in Limerick have been reduced from 17 to 8 or 9 including drivers. There is one full time administrator in the Limerick office now. The Limerick office is a distinct entity of the group and it would not have been reasonable to expect the claimant to travel to Galway to work. J's job is different to that of the claimant.

Under cross-examination the claimant job entailed her answering the phones, order taking and accounts. J carries out the cash reconciliation and cash lodgements now. J has been employed by the respondent for about four years. The claimant's role was not the same as his.

A Director of the respondent's group gave evidence; he was a director when they acquired company A. He was referred to the claimant's T1A in which she stated that while J was covering for a part-time employee, J had met with this witness who offered her a permanent position in the Limerick office. He explained prior to J going to Limerick she had worked in the Loughrea office on credit/stock control, inputting sales and from time to time would work on a parcel of work. She is responsible for the ordering of lubricants for the entire group, which is a very responsible position that you could not give to a general administrator. The lubricant role went with J wherever she worked. He met with J on the 11th June 2009.

Under cross-examination he explained he had known the claimant for a couple of years she was competent however the work in the Limerick office at the time was spread through three admin staff. The claimant could cover certain aspects of J's job but would not have the knowledge of the whole structure of the company as J had. HR had drafted the proposed contract. He had spoken with the claimant regarding her redundancy. He told her that the office in Limerick was scaling down with the office manager and J would cover for the office manager. It was going to be a one-person office. He did not accept that the claimant could carry out the same role as J; the claimant had told him she was not chasing outstanding accounts, and the proposed contract of employment had not included credit control. He had discussed the situation with the claimant and she had accepted her redundancy.

Another director of the group gave evidence on behalf of the respondent. He confirmed that "LIFO" does not apply when making redundancies in the group. J was not a comparable employee to the claimant as J's role was more comprehensible. The claimant's T1A stated that she emailed the respondents HR manager accepting the new contract offered to her. This witness disagreed the claimant had indicated that she may accept the new contract but this new contract was not signed

Under cross examination he confirmed that he had no performance issues with the claimant. The

claimant was the last in to the Limerick office, J was employed around late 2005 or early 2006. He accepted that the claimants email to HR stated “you can take it I will sign the contract”. The claimant could not cover for J’s annual leave. When J goes on holidays another employee with knowledge of their areas countywide covers for her. J’s lubricant role was not included in the claimant’s proposed contract. When they had taken over the Limerick office the changes made were an ongoing process so the claimant’s redundancy had evolved over two years.

Claimant’s case

The claimant gave evidence, she commenced employment in July 2006. She worked in administration and did whatever was asked of her. She saw no difference between her and J’s role while they were in the office together. She had travelled before for the respondent. If she had not got the skills required to retain her job she was willing to be retrained.

Under cross-examination she explained previously being involved in lubricants but would have required training and more knowledge in this. She had accepted the new contract by email and by telephone, while she was suppose to give her answer by Monday 29th June 2009 but she had to go early on this day and confirmed with HR on the 30th June 2009. She had showed the manager a lot of her role that she would not have if she had known he was going to take over part of her role.

She gave oral evidence of loss.

A driver/salesperson of the respondents gave evidence on behalf of the claimant. He is employed there for 20 years firstly with company A. It was his point of view that you would not see any difference in relation to the running of the office between the claimant and J.

Determination

The Tribunal carefully considered the evidence adduced at the hearing. While the Tribunal accepts that there was a genuine redundancy in the pipeline, the manner in which the claimant’s redundancy was handled was inadequate. There was no alternative discussed with the claimant who was willing to retrain or travel to work in another location.

The Tribunal finds the dismissal unfair by reason of the manner in which it was handled, we would assess compensation at a modest level. Such an approach in our view is “just and equitable having regard to all the circumstances” under section 7 (1) c of the Unfair Dismissal Act 1977 to 2007. In determining the amount of compensation payable, the Tribunal had regard to the claimant’s mitigation of loss and awards the claimant the sum of €10,000.00 under the Unfair Dismissals Act 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)