

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE – claimant

UD36/2010

against

EMPLOYER – respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. N. O’Carroll-Kelly BL

Members: Mr. J. Reid
Mr. J. Maher

heard this claim at Dublin on 31st March 2011

Representation:

Claimant: Mr. James O’Donoghue of Bowman McCabe Solicitors,
5/6 The Mall, Lucan, Co. Dublin

Respondent: Ms. Gillian Reid BL instructed by Mr. Denis Hipwell of
Patrick O’Toole Solicitors, 5 Church Street, Wicklow Town,
Co. Wicklow

The determination of the Tribunal was as follows:-

Respondent’s Case

The manager gave evidence. The business is a floor-covering wholesaler. Originally his parents founded the business. He came into the business full time in 1976 after his father died. Then in 2004 the original business foundered. In 2007 the present company started up. As the manager was not allowed to be a company director, his wife and son are the directors.

In the summer of 2007 the financial controller left. The company accountants, who also wrote her contract, selected the claimant for the post of financial controller. She was there on a temporary basis for three months. Then her contract became a 12-month roll over contract. The manager accepted that Section 4 of the claimant's contract reads '*employment will become permanent*'. However the manager felt that there was an understanding with the claimant that this was a new business, coming after the collapse of the old business. Therefore if the business did not make money her employment would be short term. With the recession the idea of permanent went out.

The claimant drew up the accounts; therefore she was aware that the business was making a loss. The claimant worked upstairs and she took care of creditors and tax administration. Downstairs the office administrator sent out the invoices.

The manager told the Tribunal that the claimant was not a team player. She got on well with him but did not get on well with the other employees. The manager recalled an incident in May 08. The claimant was about to go on holidays and was annoyed because she did not get a bonus. She left a list detailing the wages of each employee, except herself, where the others could all see it. The senior sales man was livid. The staff could not understand why this happened. The manager likes the business to run with a good atmosphere, so he left matters cool down for two weeks before he called a meeting. The claimant apologised for her actions and received a verbal warning.

The manager had two other issues with the claimant. She worked short hours, leaving work at 3.00pm rather than 5.00pm. The claimant also phoned her sister very often. When the manager came into the upstairs office the claimant would often end a phone call. The manager thought the claimant spent an excessive amount of time making personal calls but because he does not like confrontations he did not look at the phone records until after the claimant left. The records showed continuous personal calls.

In October 09 the claimant approached the manager and told him that she was there two years and she needed a pay increase. The manager agreed to increase her pay by about 15% even though he did not see it as fair. The claimant was the financial controller and therefore she was aware of the extent of the bad debts on the books. She did not seem to appreciate that there would be a difficulty increasing her salary. When the manager went home and told the directors they went crazy. The directors would not consent to the claimant's pay rise. The business had sustained heavy losses over the previous 2 years and the manager's mother was ill.

On the following Friday the manager told the claimant he was letting her go because he could not afford to employ her. To keep the company alive the claimant had to go. She would not be replaced. The claimant was not given the option of a pay cut as an alternative. The manager's son and wife do what remains of the claimant's job. The manager's son is paid significantly less than the claimant and he does other tasks. The manager told the claimant he would give her 6 weeks pay. She demanded to be paid at the higher rate. The manager agreed. The claimant became upset. She abused the manager to other staff members. She would not work her notice. The manager sees himself as a fair employer and so he gave the claimant a reference.

The company is still trading but is on its last legs.

The company director gave evidence. The business was struggling in 2009 and it continues to struggle. During the course of her employment the claimant received three pay increases. On each occasion she approached the manager directly. The director let the matter go on the first and second occasion. On the third occasion the company could not afford it. The result would have been to close the business. Her son now does the job of financial controller.

The company director felt that the claimant did not abide by the terms of her contract. The claimant came to work late and left early. She made some mistakes in entering lodgements to the wrong accounts that had to be fixed after she left. The claimant had no relationship with her colleagues downstairs. The sales staff could not approach her to sort out mistakes. The extent of the claimant's phone use only came to light after she left.

The company director did not discuss the issue of redundancy with the claimant and did not discuss alternatives with her.

The office manager gave evidence. She started with the business that had collapsed. She has no contract. She did debt collection. If she was taking holidays she informed the claimant.

The claimant implemented a new computer system but then she stopped all customer accounts at the end of the month and would not show the office manager how to free the accounts. The claimant did not always communicate with the office manager especially if she received a post-dated cheque for an outstanding account. The claimant was not approachable. If the office manager asked if there was a mistake the claimant always said no. The office manager could not approach the manager because his mother was ill at that time. The claimant often left work early.

In May 08 when the claimant did not receive a holiday bonus, she was very annoyed. The claimant gave the office manager a piece of paper with details of each employee's wages on it. The claimant's own wage details were omitted. This action caused terrible feelings.

The day the claimant left she was very annoyed and was verbally abusive to the manager.

Claimant's case

The claimant gave evidence. She started work in October 2007. She was the financial controller and looked after creditors, debtors and monthly accounts for the directors. She had no HR role. Her starting salary was €27,000 per annum. After three months her salary was increased by €3000. She was not on a roll over contract. After the first three months she was a permanent employee.

The manager ran the business and the claimant thought he was very nice. When she had a financial difficulty he loaned her money. She had a good working relationship with the manager.

Initially the computer system was difficult so she suggested a new system to the manager. The new system was put in place. The manager said he would review her salary after a year. Her salary was increased to €35,000 through the books and €100 paid in cash every week. She did not have much interaction with other staff members. The office manager would phone her if there were a problem with an account.

When she was going on holidays in May 09 she put the payslips into the cashbook, which she then gave to the office manager. She did not recall being upset about not getting a bonus. She never cursed. She did not break confidentiality deliberately. It was a mistake. She apologised. The claimant did not dispute her use of the phone.

When she was there for two years; the claimant approached the manager for a pay rise. He agreed to increase her pay by €100 per week. This was on Wednesday. On Thursday the manager called her to the office. He took the chequebooks from her and said that he was letting her go their arrangement was no good for the company. She asked him if she was sacked for asking for a pay increase but he did not reply. He paid her for 6 weeks.

The claimant was not an employee when the manager's previous business collapsed. She looked after the books so she was aware of the financial difficulties of the business. She was aware that turnover had declined when she asked for a pay increase. She felt that the manager could have said no. Her salary increase was not agreed in a written contract.

No alternatives to being let go were offered to her. Neither a reduction in her hours nor a reduction in her salary was proposed by the manager.

Determination

The Tribunal carefully considered the evidence adduced. The respondent's business was struggling to survive. Turnover was declining. The manager agreed to a third pay increase for the claimant without consulting with the directors. They refused to sanction the increase. Faced with a situation where he had agreed an unsustainable pay increase for the claimant the manager dealt with the situation by dismissing her. He did not follow any acceptable procedure in dismissing her. The claimant was not put on notice that her job was at risk and she was not given any alternative proposals other than dismissal.

The Tribunal finds that the claimant was unfairly dismissed. The claim under the Unfair Dismissals Acts 1977 to 2007 succeeds. Taking all the circumstances of the case into account the Tribunal award the claimant nil compensation.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)