

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

UD2214/2009

against
EMPLOYER
under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr. J. O'Neill

Mr. J. Dorney

heard this claim at Dublin on 17th February 2011 and 8th June 2011

Representation:

Claimant:

Mr. James Evans, James P Evans, Solicitors, 13c Main Street, Ongar Village, Dublin 15

Respondent:

Mr. Ken Stafford, 7 Castletown Court, Celbridge, Co. Kildare

Respondent's case

The respondent began to experience trading difficulties in 2008, which continued into 2009. Accounts for both years showed a loss of €650,000.00. The respondent decided to implement cost cutting measures, which included redundancies. It was important to the respondent that those who were retained would have the requisite skills to allow the company to continue trading as efficiently as possible. However, if a number of staff had the same or similar skill sets, redundancies would be decided on a last in, first out basis. No documentary evidence was produced in relation to length of service for employees, however it was the respondent's case that only one person with less service than the claimant was retained. This person was retained on the basis that they had different set of skills from that of the claimant and that this persons skills were crucial to the business. The respondent stated that the claimant could not have carried out the duties of this other employee.

The claimant and other employees were made redundant on 7th May 2009 and the claimant was paid a redundancy lump sum. No alternative employment was offered to the claimant, as none was available.

Claimant's case

The claimant contended that she should have been retained instead of the other employee with less service, as their skill sets were very similar. Initially the claimant was a retail outlet manager with the respondent and had then moved into administration and also had some sales experience. The claimant asked, at the time of being made redundant, for details of the skills set comparison made by the respondent but did not receive one. The claimant was adamant that she had the skill required sets could easily have continued in a reorganised position instead of her shorter serving colleague.

There was no opportunity afforded to the claimant to discuss alternatives to redundancy and she felt that the respondent failed to adopt any fair procedure in deciding whom to select for redundancy between herself and the employee who was retained. Therefore it was the claimant's case that this was an unfair dismissal as she was unfairly selected for redundancy.

Determination

Having considered the evidence adduced the Tribunal is satisfied that the respondent was experiencing trading difficulties and there was a genuine case for cost cutting including redundancies. However in the present case the Tribunal is not satisfied that the selection process was properly carried out or that there was any objective criteria for selection of the claimant for redundancy.

Therefore the Tribunal finds that the claimant was unfairly selected for redundancy and awards the claimant €30,336.00 under the Unfair Dismissals Acts, 1977 to 2007. This award is over and above and in addition to any payments already made in respect of redundancy and takes into account the fact that the claimant was on a three day week and the extent to which she was able to mitigate her loss.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

