

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE - *claimant*

UD678/2010

against

EMPLOYER - *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr. A. O'Mara
Mr J. Jordan

heard this claim at Dublin on 7th July 2011

Representation:

Claimant(s) : In Person

Respondent(s) : Mr. Tom Jordan, Jordan Consultants, 3 Brookside Terrace,
Dundrum Road, Dublin 14

Respondent's Case

Witnesses for the respondent gave evidence that the company operated 3 retail stores within the Dublin Airport complex. Due to the construction of a new terminal in the airport the company had to close one of the stores for a period of time. As a result of this and the general economic downturn the company had no option but to reduce its labour costs. The company employed six duty managers and the position of duty manager was identified to be made redundant in November 2009. All of the duty managers were offered the choice of accepting statutory redundancy or accepting an alternative position of sales assistant with a 10% reduction in salary. The company employed 17 employees and 9 of those employees were requested to take a pay cut of 10%. The company could not reduce the pay of the remainder of the employees as they were paid the national minimum wage. The claimant who was employed as a duty manager and had three and a half years

service elected to accept the redundancy offer and was paid her statutory redundancy entitlement. The company employed 17 employees and the claimant had 9th highest level of service in the company.

Claimant's Case

The claimant, who is a Latvian national gave direct evidence that she commenced working as a sales assistant with the respondent company in May 2006. She was promoted to duty manager in August 2007 and worked 40 hours per week. In April 2009 following her return from maternity leave her working hours were reduced to three days per week. She requested a letter from the company stating that she was now working only three days per week but the company refused to provide her with a letter to that effect. She felt that she was treated differently to Irish employees and was not accommodated by the company when she requested to work specific shifts. She gave evidence that employee (S) was provided with early shifts. While her hours were reduced similar Irish employees did not have their hours reduced. The hours of another employee (MW) were increased from 3 days per week to 5 days per week. Irish duty managers were allowed to work the same shifts and this facility was not afforded to her. She was not allowed to carry out certain tasks that were carried out by other duty managers (such as cashing up). In November 2009 she was told by the company that she had to revert to a position of sales assistant and take a 10% pay cut or be made redundant. She enquired from the Managing Director of the company (MW) as to how many hours per week she would be working in her new position and he replied that he could not promise her a guaranteed number of hours. She was left in a very stressful position and had no option but to accept the offer of redundancy as she did not know how many hours per week she would be working into the future. Her employment terminated on 2 December 2009 and she has been unable to secure alternative employment to date.

Determination

The Tribunal noted the non-appearance of the person who made the decision to dismiss the claimant in this case. The claimant worked in a position that was alleged to be a duty manager for the respondent. She was not allowed to do the normal duties attending such a position and was not allowed to "cash up" like some of the other staff. It was purported by the witness for the respondent that the claimant was made an offer of taking a reduction in her hourly salary or being made redundant and the claimant selected redundancy. The claimant enquired of the respondent as to the number of hours that would be given to her in her new position and was not given an assurance as required under section 3(1)(i) of the Terms of Employment (Information) Act, 1994. The Tribunal determines that this was not an offer of two alternatives but rather a decision to dismiss her by reason of redundancy because there was an unreasonable expectation on the part of the respondent who in effect gave her no choice but to refuse the purported offer and accept statutory redundancy. Witness for the respondent gave evidence that the company reduced wage levels by 10% for all employees other than those in receipt of the national minimum wage. The Tribunal, upon inspection of the company's wage records discovered that this was not actually the case and some employees earning in excess of the national minimum wage did not suffer a pay cut.

The Tribunal determines that the claimant was not treated the same as other duty managers and was in effect a shop assistant. Other shop assistants with less service were retained while she was

selected for redundancy. In these circumstances the Tribunal finds that the claimant was unfairly dismissed and awards her compensation in the sum of €16,000.00 under the Unfair Dismissals Acts 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

