

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE - *claimant*

CASE NO.
UD2066/2009
RP2331/2009

against

EMPLOYER - *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Ms A. Gaule
Mr J. Maher

heard this claim at Dublin on 7th December 2010 and 16th May 2011

Representation:

Claimant : Ms Kiwana Ennis B L instructed by
Brian Crowe & Company, Solicitors, Newcourt, 177 Harold's Cross Road, Dublin 6

Respondent : Mr Peter Flood, IBEC, 84/86 Lower Baggot Street, Dublin 2

Preliminary Point

The claim under the Redundancy Payments Acts 1967 to 2007 was withdrawn during the course of the hearing.

Respondent's Case

The respondent recruited the claimant in September 1998 on a fixed term contract to cover the maternity leave of a permanent employee. She was based at a day care centre for children at a location in Dublin 8 and her job title was that of a project worker. In May 2001 the claimant signed a further contract effectively conferring her employment status as permanent. By 2007 up to five staff including the claimant were working at that centre. Due to a depletion in child numbers at the centre in 2008, and what the human resource manager called a reconfiguration in the structure and approach of the respondent, this centre did not re-open in March 2009 and plans were in place to move the staff elsewhere. The staff at that centre were earlier informed of that development. The head of services for the Eastern region wrote to the claimant on 17 September 2008 informing her that her position as project worker would move to premises in Dublin 7.

The human resource manager told the Tribunal that the claimant was offered, but declined, three alternative positions prior to the decision to make her redundant in March 2009. Those offers included an administrative post, and similar positions as a project worker albeit at different locations. The claimant rejected those alternatives on the grounds of health, distance and commuting, weekend shifts, family arrangements and the impression that she was interfering with the prior appointment of a colleague. While the witness had some understanding of those issues the respondent was nevertheless limited in what options it could offer to the claimant.

This witness wrote to the claimant on 25 March 2009 outlining the sequence of events that led to the respondent's decision to make her redundant. She had already told the claimant that redundancy was a possibility in the event that she did not accept an alternative position. In addition to her statutory redundancy the respondent also presented the claimant with an ex-gratia payment. Her employment ceased on 8 May 2009. The witness commented that the claimant's pregnancy had no influence or impact on the decision to terminate her employment.

The head of services Eastern Region had up to five managers including that of the claimant reporting to her. This witness together with the claimant's manager met with the claimant in early September 2008 and discussed her concerns about her position and location. She also wrote to the claimant later that month stating that her post as project worker would be moving elsewhere. However, the proposed location and movement did not subsequently materialise. Further correspondence and communication continued between these two women through the autumn of that year. During that time the claimant expressed her unease at the lack of clarity and certainty regarding her job and location. The witness sought the assistance of the claimant's direct manager in this process.

The witness, claimant and her manager met on 11 February 2009 where possible options were discussed regarding the claimant's future with the respondent. Prior to that meeting the witness was unaware that the claimant was pregnant or where she resided. Those options included moving to other locations as well as a redundancy package. The claimant rejected one move based on its location and queried the second one especially in relation to the repercussions on another colleague. By March the claimant had for various reasons also declined a movement to the second location.

The services manager of the respondent organisation gave evidence that she recommended that the claimant be re-deployed in a nursery setting in a residential centre at a Dublin 11 location. She did so on the basis that the claimant's skills set and experience lay with working with children in the zero to 5 age group. The claimant was unhappy with this proposal due to the location in Dublin 11 and informed the witness that she would not be accepting the offer. The witness accepted that the claimant could have done the work offered to another colleague known as (SK) in a Dublin 2 location, but felt that (SK's) skills set was best suited to the Dublin 11 post. (SK) had also completed a case management course and this was an important factor in recommending her for the position in the Dublin 2 location. She accepted that she did not seek the views of the claimant and (SK) prior to recommending their re-deployment. She denied that she told the claimant that she had to take the post in the Dublin 11 location, she did however make a recommendation that the claimant be re-deployed there. The claimant did not inform her that she would be unable to work weekend or shift work during the discussions about re-deployment. She denied that she told the claimant that with hindsight she would have handled things differently.

Claimant's Case

(SK) gave evidence she that commenced working for the respondent organisation in February 2007 as a project worker in the same Dublin 8 location as the claimant. On 11 February 2009 she attended a meeting along with the claimant where they were both told that they were being re-deployed, as the Dublin 8 location was closing down. She was told that she was being re-deployed to a centre in a Dublin 2 location and she was happy to accept this position. She was told that she was selected for this position on the basis of her skills set. She commenced in her new position sometime after 9 March 2009 and continues working there to date. It was never indicated to her that she might be removed from this position in favour of the claimant.

The claimant gave direct evidence that she commenced working for the respondent organisation as a community service volunteer. She was appointed to a full time position as a project worker in August 1999 and was based at the respondent's Dublin 8 location. She worked with children up to 8 years of age. In September 2008 she became aware of future changes in the organisation and there was a general concern about the future of the service. She wrote to her employer on two occasions in October 2008 seeking clarity on proposed restructuring and changes. On 22 December 2008 she also informed her team leader that she was pregnant.

On 11 February 2009 a team meeting was held. At that meeting she was told that the Dublin 8 location was closing on 13 February 2009 and that she was to be re-deployed to a location in Dublin 11. Her two colleagues, (SK) and (F) were told that they were to be re-deployed to a location in Dublin 2. She was told that her skills set lent her to being re-deployed to the Dublin 11 location. She was very disappointed and became visibly upset at the meeting. She did not accept the reasoning behind her proposed re-deployment to the Dublin 11 location as she was of the view that she had similar transferable skills to (SK). She lived in Co. Kildare and it would not have been feasible for her to commute to and from the Dublin 11 location on a daily basis. She had commuted to her Dublin 8 location by train and she was not happy to work at the Dublin 11 location under any circumstances. She enquired about alternative options and a proposal was put forward to her regarding working at another city centre location. However this position involved weekend and shift work and was not suitable to her due to childcare difficulties and the fact that her partner worked some weekends. On 16 March 2009 she was told that the respondent, as part of the re-deployment strategy had decided to reverse the job allocation and she was now being offered work at the Dublin 2 location. However, as (SK) was already in that position she did not feel she could accept the offer as (SK) had been her colleague for a number of years and she would be taking her position if she accepted the offer. She felt that morally and ethically she could not take her colleague's job. She told the Tribunal that the respondent should have engaged in a consultation process concerning the proposed changes much earlier and had this occurred it would have led to a much fairer outcome. She was made redundant on 8 May 2009 and was paid her redundancy entitlement.

On cross examination the claimant accepted that the respondent offered her three alternatives as part of the re-deployment but they were unsuitable for her. She confirmed that she did not invoke the grievance procedures contained in her contract of employment. While her contract of employment provided that she may be required, from time to time to work at other locations other than the Dublin 8 location she did not accept that she could be relocated without discussion at the drop of a hat. She is currently unemployed and has applied for a number of positions since the termination of her employment in May 2009. She has largely been unsuccessful in those applications and has only been in employment from July 2010 to November 2010 earning a total of approximately €10,000.00.

Determination

The claimant commenced working with the respondent in September 1998 on a fixed term contract to cover the maternity leave of a permanent employee. She was based at a day care centre for children at a location in Dublin 8 and her job title was that of a project worker. In May 2001 the claimant signed a further contract effectively conferring her employment status as permanent. By 2007 up to five staff including the claimant were working at that centre. In 2008 due to depleting child numbers at the centre, and a restructuring and reappraisal of the services being provided by the respondent, this centre (where the claimant worked) did not re-open in March 2009 and plans were in place to move the staff elsewhere. The claimant was offered three alternative positions as part of the respondent's restructuring but she declined all three positions leading to her being made redundant in March 2009. Those offers included an administrative post, and similar positions as a project worker albeit at different locations. The claimant rejected those offers on the grounds of health, distance, commuting, weekend shifts, family arrangements and the impression that she was interfering with the prior appointment of a colleague. The respondent made it clear to the claimant that redundancy was a possibility in the event that she did not accept an alternative position.

The claimant's position was made redundant in 2008. In addition to her statutory redundancy the claimant was also given an ex-gratia payment.

Employers must act reasonably in taking a decision to dismiss an employee on the grounds of redundancy. Indeed section 5 of the Unfair Dismissals (Amendment) Act 1993 provides that the reasonableness of the employer's conduct is now an essential factor to be considered in the context of all dismissals. Section 5, inter alia, stipulates that:

".....in determining if a dismissal is an unfair dismissal, regard may be had... .. to the reasonableness or otherwise of the conduct (whether by act or omission) of the employer in relation to the dismissal"

Having carefully considered the totality of the evidence the Tribunal is satisfied that the respondent acted reasonably and accordingly determines that the claimant was not unfairly dismissed, by reason of redundancy or otherwise, for the following reasons:

1. She was offered, but not prepared to work in Finglas (Dublin 11 location) under any circumstances even though under her contract the employer has the right to require her to work at different places in the Dublin region. (This is referred to at two places in the contract):
2. In total the respondent offered the claimant three alternative positions, all within the Dublin region, all of which were unacceptable for one reason or another.
3. The proposed move of work locations in Dublin was entirely reasonable. The claimant chose to live in Co. Kildare and cannot justify refusing alternative positions on the grounds it involved extra travelling for her.
4. The claimant could not work in (Georges Hill), the city centre location offered because of "child care" even though she did not have a child at the time. (The Tribunal is satisfied that the claimant's pregnancy had no influence or impact on the decision to terminate her employment):
5. She also claimed that as her partner worked some weekends she could not work at Georges Hill (city centre location) as it involved weekend work. Again this is not a valid reason:
6. The claimant did not use the grievance procedure set out in her contract which she is

obliged to do if she felt she had a legitimate grievance.

Accordingly the claim under the Unfair Dismissals Acts, 1977 to 2007 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

