

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

UD2633/09

- claimant

against

EMPLOYER

- respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms F. Crawford B.L.

Members: Mr P. Pierce
Mr C. Ryan

heard this claim at Naas on 12th April 2011 and 7th September 2011.

Representation:

Claimant:

Respondent: Mr. Karl Carney, Solicitor, Raheen, Arklow, Co. Wicklow

The determination of the Tribunal was as follows:-

Opening statement by legal representative for respondent

The respondent is a pharmacy and part of a group which owns several pharmacies in Kildare and Dublin. The accounts department is located in Naas.

There was a fall in the respondent's turnover. The HSE had introduced cuts in February 2009. The claimant's position of bookkeeper was no longer in existence. The owner took control of that function. There was no comparator.

The claimant was made aware of the respondent's financial difficulties in June 2009. She was fully aware the company was not trading well.

There was a threat of the respondent going into receivership and serious restructuring was necessary including redundancies. Director HC held a meeting with the claimant in June 2009 and informed her of the seriousness of the financial situation. He advised her to prepare a CV with the view to securing alternative work and if she secured such work the company would regard her as

being made redundant and pay her entitlement. The claimant felt that an accounts employee would be the last to be made redundant.

At a meeting in July 2009 the claimant enquired if matters had improved. They had not. She was asked to work on her CV.

In August two meetings were held, the first with the qualified pharmacists who were asked to take a 20% reduction in their salaries and at the second meeting the remaining staff were asked to take a 10% reduction in their salaries.

One redundancy was required and HC and the other shareholder in the company met the claimant and gave her notice of her redundancy. The claimant was invited to another meeting and to have a representative present. That meeting was held on 1st September 2009 and the details of her redundancy and notice were discussed. She was asked for her views. She enquired if the data entry employee might be let go.

The respondent considered moving the claimant into the shop area of the pharmacy but she would have suffered a severe reduction in salary and was not qualified to work in that area.

Her redundancy payment was paid on 30th September 2009.

On 1st September 2009 HC offered the claimant assistance should she wish to set up her own consultancy business?

Fair procedures were applied as Ms L was made aware of the financial position,

Respondent's Case:

The respondent is a pharmacy and part of a group, which owns several pharmacies in Kildare and Dublin. Up to 2008 the company had traded profitably. Consequently consumer spending dropped and impacted on the company.

Price cuts were introduced by the HSE. The impact of the price cuts was 85% to 90% of what was originally projected. The respondent's accountants advised the company that the monetary impact would be greater than their profits and to look at their staffing levels. If the Group were to continue as it was there would have been severe loss making.

HC is a 50% shareholder and his wife is the other 50% shareholder in the company. The respondent's head office is in Naas and all the pharmacies are controlled from there. The accounts department is also located in Head Office. The claimant was employed as a senior bookkeeper; she prepared management and audit accounts, supplier payment requirements, reconciliation of invoices/statements, bank reconciliations, and was involved with interfacing with HSE on specific pharmacy related payment schemes. JK worked as a part-time bookkeeper and her role entailed data entry. She worked 20 hours per week.

The claimant was an experienced bookkeeper and was ten years in her role. She was diligent and the respondent had no issue with her work. She was encouraged to take courses to progress her career. The respondent paid her fees and for her exam leave.

In early 2009 cash flow was in decline and turnover was down. Two major banks that supplied capital asked for a review of the management accounts and one was threatening taking back a loan. In February consideration was given to reducing expenditure. HC went to the suppliers and asked for reduced terms, cleaning was reduced and a decision was taken not to replace employees who left employment

In June 2009 the claimant was aware turnover had declined. HC met the claimant and explained the situation to her. The company was threatened by the Bank and HC was afraid he would lose control of the company. At that stage he asked the claimant to prepare a CV and if she secured a job elsewhere he would pay her redundancy. He asked the claimant to keep the matter confidential as he feared if suppliers became aware of the financial situation they would want to be paid cash on delivery.

On 11th August 2009 HC met the pharmacists to discuss the current economic environment, the Government cutbacks for the pharmacy and their effect on the business. Consideration was given to work rosters, a reduction in shop opening hours, a reduction in pay and conditions of service and the plan to make at least one person redundant. Pharmacists were asked to take a pay cut of 20%.

On 13th August 2009 HC met with the non-pharmacist staff and again discussed his concerns and asked these staff to take a 10% reduction in salary.

HC asked for consent to the pay reduction and all staff agreed. He did not ask the claimant to sign the consent form, as she was being made redundant.

HC looked at each job function and the job he felt he could do was the role performed by the claimant. As HC worked outside of the company he contended that he could perform the claimant's job out of hours. He felt he could not transfer the claimant to the shop or to the data entry role, as it would have a significant impact on her terms of employment. He also felt that the claimant would prefer to be made redundant than work in the shop. He did not have a role to transfer the claimant to. Of the two jobs, namely the claimant's role and JK role, HC felt he could perform the claimant's job.

HC, co-Director (JG) met the claimant and informed her that she was being made redundant. He explained the company needed to make savings and that he would take over her role. The claimant enquired about taking a pay cut but this was not possible. She became emotional and suggested a further meeting be held with her representative. A meeting took place on 1st September 2009 and the claimant's representative BA discussed the terms of the claimant's redundancy. More money was sought. An enhanced package was not feasible. There had been no issue with the claimant's work. The claimant did not return to work following that meeting.

JK commenced employment on 8 September 2008 and initially worked in the shop. She moved to the vacant data entry role and worked in that role two days a week and in the shop three days a week. The claimant trained her in on the data entry role. She works twenty hours per week.

Claimant's Case:

On the second day of the hearing the claimant gave evidence. She commenced employment with the respondent in 2001. She felt she had a good working relationship with the respondent until 2009. She recalled the meetings she had with HC on her own and with other colleagues. At the staff meeting in August she was given a form to consent to a reduction in wages, she was the only

staff member not given one. She was asked to stay back from the meeting and was informed by HC she was to be made redundant. She asked could she take a wage reduction or a reduction in hours but was told no. She was not given any written notice of her redundancy or no alternative to her impending redundancy was given. She was also not informed the criteria used in making the decision she was to be made redundant. She received a statutory payment of € 10,596.00 for redundancy. She gave evidence of loss.

On cross-examination she stated HC had advised her earlier in 2009 she should update her CV. She explained that a colleague of her (L) worked 20 hours performing office duties and 20 hours on the shop floor. On September 1st she was informed she was to be made redundant on September 30th, she was absent on sick leave at the time. HC and L continued to carry out her duties after she was let go.

Determination:

Having heard all the evidence and submissions over the two days of this hearing and carefully considering it the Tribunal find the claimant was procedurally unfairly selected for redundancy. Accordingly the Tribunal awards the sum of € 10,000.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)