

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:  
EMPLOYEE

CASE NO.  
UD707/2010

against

EMPLOYER  
under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr. D. Moore  
Mr. P. Trehy

heard this claim in Dublin on 20 July 2011 and 22 September 2011

Representation:

---

Claimant(s):

Mr. Pádraig Lyons BL instructed by  
Mr John Sadlier, McMahon Goldrick, Solicitors,  
130-132 The Capel Building, Mary's Abbey, Dublin 7

Respondent(s) :

Ms. Síobhra Rush, Matheson Ormsby Prentice, Solicitors,  
70 Sir John Rogerson's Quay, Dublin 2

The determination of the Tribunal was as follows:-

It was alleged that the claimant, a car rental company risk manager, had been unfairly dismissed after an employment from December 1998 to October 2009.

In its defence the respondent contended that the claimant had been dismissed by reason of redundancy, for which she had been fairly selected, in accordance with Section 6 (4) (C) of the Unfair Dismissals Acts, 1977 to 2007, such that she had no claim against the respondent under the said legislation.

The respondent underwent a reorganisation and initiated a collective redundancy process on 8 September 2009. It complied with its legal obligations in relation to all affected employees including the provisions of the Protection of Employment Act, 1977. Employee representatives were elected for the purposes of the thirty-day consultation procedure and the claimant was one of the representatives elected. When the positions to be made redundant were confirmed the claimant's employment was terminated lawfully, by reason of redundancy, on 16 October 2009.

The claimant did not raise any issue in relation to her selection for redundancy and did not apply for any new positions in her area which were created as a result of the reorganisation. In fact, following a general announcement to all staff in relation to the redundancies, individual meetings were also held with affected employees. In the meeting with the claimant, she indicated that she would not be applying for any available alternative positions in the respondent company and would prefer to take redundancy.

### **Determination:**

Under the Protection of Employment Act 1977

Section 9. (1) where an employer proposes to create collective redundancies he shall with a view to reaching agreement initiate consultations with employees' representatives representing the employees affected by the proposed redundancies.

(2) Consultation under this section shall include the following matters-

(a) the possibility of avoiding the proposed redundancies, reducing the number of employees affected by them or otherwise mitigating their consequences,

(b) the basis on which it will be decided which particular employees will be made redundant.

(3) Consultations under this section shall be initiated at the earliest opportunity and in any event

at least 30 days before the first dismissal takes effect.

The announcement of collective redundancies was made on the 8th October 2009 during the course of which it was indicated that the claimant's position as Risk Assessment Manager (as well as several others) with the Company in Ireland was under active consideration to be made redundant.

A meeting was held the following day the 9th September 2011 between the General Manager, the personnel manager and the claimant at which the redundancy was confirmed. It is common case that the General Manager did not indicate to the claimant that a role involving some element of Risk Management was being retained. Indeed the General Manager specifically told the claimant that there would be no element of risk management retained in Ireland. The claimant should have been alerted to the proposed retention of some risk management role to ensure that consultation adequately complied with Section 9 2 (a) and that the possibility of avoiding the proposed redundancies (in this case the claimant's) if possible "or otherwise mitigating their consequences". It is not clear to the Tribunal that even if the claimant was advised about this proposed position that she would have applied for it or taken it if offered. Nevertheless she should have been appraised fully of the position. It is the view of the Tribunal that the individual meeting with the claimant was held with undue haste - on the 9th September the day after the collective redundancies were announced.

While there were some deficiencies in the way the consultation process was handled by the employer, consultation is a two way process and the Tribunal is surprised at the lack of real engagement by the claimant with the respondent. The claimant was elected as a representative of the other workers, whose positions were threatened, and appears to have adequately represented these other workers but not herself. She did not apply for the position of Fleet Services Supervisor which was advertised on the 23rd September 2009 and which contained an element of risk management as well as vehicle repair. (The Tribunal notes that while the claimant previously looked after elements of vehicle repair she had asked to be relieved of this although she did look after it if the person whose job it was to look after it was out sick). The reason advanced for her failure to apply for this position was that she "wasn't really there" and "was tuned out".

This was a difficult case for the Tribunal to decide. It is not in dispute that the Employer entered into consultation with the employees but the adequacy of the consultation falls somewhat short of what is required of a reasonable employer in circumstances such as these. Accordingly the

Tribunal determines that the dismissal was unfair and that compensation is the most appropriate remedy. Taking the totality of the evidence into consideration and the contribution the claimant made to her dismissal the Tribunal allows the claim under the Unfair Dismissals Acts, 1977 to 2007, and unanimously deems it just and equitable that the claimant be awarded €12,500.00 in addition to any payment she had already received from the respondent in connection with the termination of her employment.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)

