

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

UD1070/2010

against  
EMPLOYER  
under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. K. Buckley  
Members: Ms. M. Sweeney  
Mr. J. Flavin

heard this claim at Cork on 24th August 2011

Representation:

Claimant: The claimant in person

Respondent: Ms Tara Woulfe, Mullins Lynch Byrne, Solicitors,  
Melbourne House, Model Farm Road, Cork

#### **Respondent's case**

The Respondent operated a dental practice in Co. Cork.

The respondent initially employed the claimant in July 2006 on a temporary basis to replace an employee who was on maternity leave. This position was as a dental receptionist/administrator. However the other employee wished to return to work after her maternity leave on a part time basis and consequently a part time position was then offered to the claimant as a dental receptionist/administrator. The claimant accepted the position as part time dental receptionist/administrator and continued to work at the practice for approximately 20 hours per week. The Respondent was very satisfied with the standard of the Claimant's work.

The claimant's job involved, to a large degree, processing claim forms for payment under the Medical Card Scheme and the Social Welfare Dental scheme. The Medical Card Scheme and Social Welfare Scheme formed a major part of the work and income of the Respondent's dental practice. However when treatments available under these schemes were severely curtailed in the April 2010 Budget the respondent's practice suffered a reduction of roughly two thirds in relation to income previously generated by these schemes. Consequently the requirement to process the related forms was greatly reduced and in order to reduce costs and given the significant drop in income to the practice, the respondent decided that he had to make one employee redundant. Previously there had been three people, including the claimant, involved in

processing these forms and there was no longer a need to have all three doing this. The claimant was the person with the least amount of service of the three employees involved. The other two employees had additional compliance and governance skills and therefore the respondent selected the Claimant as the person to be made redundant. The respondent met with the claimant and informed her of this decision. A cheque in respect of statutory redundancy was given to the claimant and this cheque was cashed.

The respondent was aware that the claimant had previously worked as a dental nurse in the U.K. but he had never employed her in that role. A vacancy had arisen for a dental nurse within the practice in 2007 but, although the Claimant was aware of this vacancy, the Claimant did not apply for the position. Accordingly the Respondent did not consider it an option to reassign the Claimant to those duties, instead of making her redundant in 2010. If he had done so this would have meant making one of the existing dental nurses redundant instead of the Claimant.

### **Claimant's case**

On 3<sup>rd</sup> February 2010 the claimant stated that she was approached by the respondent and asked was it worthwhile her working considering her childcare costs. The claimant was aware of impending changes in the Medical Card and Social Welfare Schemes and asked the respondent saying that she was going to be made redundant. The response to this question was that it was possible. As the respondent had not spoken to other staff at this time the claimant felt that she was being singled out. The claimant was worried about her future as she was pregnant on her second child and did not wish to be made redundant.

Although the subject of redundancy was discussed on a number of occasions the claimant stated that she was never informed of any selection criteria or told why she was selected for redundancy. The claimant had managerial and dental nursing experience in previous employments. She had on relatively few occasions done some nursing work in the practice but she conceded that she was employed primarily as a receptionist/administrator. No consideration had been given to offering the Claimant a different role within the practice, nor had job sharing been considered.

The claimant has not been employed elsewhere since being made redundant as she is unable to work, initially due to her pregnancy and more recently because she is full time carer to her child who has a severe heart condition.

### **Determination**

The tribunal considered at length all of the evidence put before it by the parties.

On a determination of the facts the Tribunal is of the view that the Claimant's case fails. The Tribunal is of the view that a genuine redundancy situation had arisen. It was clear from the evidence that the income of the practice had dropped dramatically. It was put forward that it had initially been thought that only medical cardholders would be affected by the imposed budget cutbacks. However, changes were also introduced in relation to PRSI patients and this had a catastrophic effect on the income levels generated or derived from this part of the practice. The Tribunal accepted that this was the case, as documentary evidence was supplied in support of the respondent's contention that there was a downturn in the business of the practice, and this was not disputed by the Claimant.

It was also clear from the evidence that the workload of those employees employed in non dental

positions ie., administration/secretarial positions within the practice had been reduced substantially. The Tribunal accepted, as a result, that the redundancy was based on economic considerations.

The Claimant's position was not replaced and the Claimant's work load was shared among the remaining employees.

The Tribunal was satisfied that the Respondent had given adequate thought as to how savings might be made. While the Tribunal had every sympathy with the Claimant, it was clear that the Respondent would have had to have made another member of staff redundant if the Claimant was retained. The other members of staff in non-dental positions had clinical governance, compliance and management skills.

The only other alternative open to the Respondent would have been to make one of the dental nurses redundant and on the basis that a redundancy was not required from this side of the practice, the Tribunal considered that the Respondent's selection of the Claimant for redundancy was not unreasonable given the circumstances. Accordingly, the Claimant's claim under the Unfair Dismissal Acts 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

