

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO:

EMPLOYEE - *claimant*

UD2329/2009

RP2661/2009

MN2165/2009

against

EMPLOYER - *first named respondent*

EMPLOYER - *second named respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE OF TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. J. Lucey

Members: Mr. A. O'Mara
Ms. S. Kelly

heard this appeal in Limerick on 20th July and the 10th October 2011

Representation:

Appellant: Ms. Sinead Garry BL instructed by Mr. John McNamara, John
McNamara & Associates, Solicitors, 28, O'Curry Street, Limerick

Respondent: Ms. Fiona Manning, Holmes O'Malley Sexton,
Solicitors. Bishopsgate, Henry Street, Limerick

The decision of the Tribunal was as follows:

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005
was withdrawn.

The claimant was employed in the first named respondent business from February 15th
2004 to October 5th 2009. She was employed in the second named respondent from
November 15th 2007 to October 5th 2009.

Respondent's Case:

The owner (ROD) of the first named respondent (A) and co-owner of the second named respondent (B) gave evidence. The claimant was first employed as full time receptionist in the dental practice A from February 2004. The dental practice B opened in November 2007 and the claimant was hired as a Practice Manager on a part-time basis. She was still employed in practice A on a part-time basis as a Practice Manager.

(ROD) explained that practice A and practice B were two totally different businesses but she was involved in both. Practice A was run as a sole trader public practice with client's fees paid by PRSI and medical cards payments. Practice B was limited company and run as a private practice.

As time past business depleted in practice A. Government policies changed and clients were only allowed one check up a year and two fillings. She lost one full-time assistant and a part-time hygienist. The claimant commenced maternity leave in December 2008 and business declined further during this time.

Another colleague took over the duties in practice A. She and another member of staff trained as Dental Nurses during this time also. In 2009 the business became very financially overdrawn. Remaining staff were trained in various duties and they even carried out the cleaning.

She and the second witness for the respondent's case met with the claimant on her return from maternity leave on October 5th 2009 and informed her they was sorry but she would have to be made redundant as practice A could not afford to have a Practice Manager. The claimant asked had they seen their solicitor and informed them she would see hers. She was paid a redundancy payment of € 4,100.00 from Practice A.

When asked she stated she carried out of the duties performed by the claimant during her employment.

The co-owner (AH) of the second named respondent (B) gave evidence. She was not involved in practice A. The claimant commenced employment on a part-time basis on November 2007, while still working for practice A. As the recession ensued business declined. The claimant commenced maternity leave in December 2008. Work duties changed during her departure. On October 5th 2009 the claimant was met on her return to work by the witness and (ROD). They informed her they could not remain paying for the position in practice B. She was not paid a redundancy payment as the witness felt she did not have the two years required service to be paid the sum from practice B. When asked she stated that she now did most of the claimant's work herself.

Claimant's Case

The claimant gave evidence. She started working for the respondent as a receptionist in 2004. During her employment with the respondent, she was hoping to get a job with Limerick County Council (LCC). In early 2007, (ROD) came to her and said that she and (AH) were going to open a new practice. They offered her a job as the Practice Manager and she agreed to accept the new role. She was then offered a full time position with (LLC) in February 2007. She told (ROD) about the job offer from (LLC) and (ROD) was not happy. (ROD) said she would match everything (LLC) had offered her. The claimant asked (ROD) for a written contract but she said there was no need, the claimant had her word.

The claimant enjoyed working for the respondent and decided to stay. She agreed to work 37 hours a week and finish at 3pm every Friday. She split her time between the two and also worked in a third practice. However, her role was never part-time and she never finished early on each Friday and she worked 40 hours each week.

In July 2008 she notified both respondents that she was pregnant and was due to give birth at the end of January 2009. (AH) was happy for her but (ROD) said it was not a good time from her. It was not an easy pregnancy but she did not go sick. She got high blood pressure and on doctor's orders she took three weeks sick leave in December 2008. She went into work in January 2009 to do the payroll and tax returns. (ROD) and (AH) told her they would pay her maternity leave when they offered her the role but when she was due to go on maternity leave they said they couldn't afford it. The claimant was not happy but she got on with it.

While the claimant was on maternity leave, she called into the respondent once a month with her child to see how things were doing. The respondent's told her things were going well. She took the statutory 26 weeks maternity leave and called into the respondent on the 5th October to tell them she would be taking another 4 weeks unpaid. (ROD) asked her what she would be doing with the child.

On Monday 5th November 2009, she dropped her son into the crèche and started work at 8am. She received a phone call from (ROD) at 10am who asked her to come to the practice to meet with her and (AH). At the meeting (ROD) said they were making her role redundant. The claimant asked if she was joking. (ROD) said her role was costing too much. The claimant asked about another position and (ROD) told her she was the manager and could not go back to reception duties. The claimant knew then she wasn't wanted. (ROD) threw a letter on the table. The claimant asked her if she had taken legal advice, (ROD) said no but she would do so then. The claimant took the letter and went home. When she opened the letter she realised they did not want her to work her notice.

While she was on maternity her work was done by others and they were still employed. The claimant said all of her duties were still being done by others.

The claimant said her hours were not reduced and working part time for each respondent was never discussed. She operated one payroll system with the two employers as separate accounts.

Determination

Having heard all the evidence adduced, the Tribunal find that although the claimant's role was redundant, the respondent's used inappropriate procedures in effecting the redundancy. The respondent's did not consider any alternatives for the claimant and consequently the Tribunal finds the claimant was unfairly dismissed.

In determining the award to the claimant, the Tribunal takes into account the redundancy payments paid to the claimant and the total loss to the claimant.

In all of the circumstances, the Tribunal awards the claimant the sum of €8000.00 under the Unfair Dismissals Acts, 1977 to 2007, by way of compensation, €4000.00 to be paid by each respondent.

Given that it is not open to the Tribunal to make awards under both unfair dismissal and redundancy legislation the appeal under the Redundancy Payments Acts, 1967 to 2007, is dismissed.

Sealed with the seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)