

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
EMPLOYEE -*Claimant*

CASE NO.  
UD1416/2011  
RP550/2010  
MN339/2010  
WT158/2010

Against

EMPLOYER -*Respondent*

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**  
**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**  
**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**  
**ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. D. Donovan B.L.

Members: Mr. J. Browne  
Mr. F. Dorgan

heard this claim at Waterford on 4th March 2011 and 1st June 2011

### **Representation:**

Claimant: Ms. Betty Dillon, Divisional Organiser, Mandate Trade Union,  
36 Michael Street, Waterford

Respondent: Mr. Gareth Hayden B.L. instructed by Eugene F Collins, Solicitors,  
Temple Chambers, 3 Burlington Road, Dublin 4

### **The determination of the Tribunal was as follows:**

#### **Preliminary Issue:**

The claimant's representative sought to amend form T1A stating that the it was clear from the details submitted in the body of the form that it was the claimant's intention to bring a claim under the Unfair Dismissals Acts, 1977 to 2007 and not the Redundancy Payments Acts, 1967 to 2007 as had been selected.

The respondent's representative objected to the amending of the form in this regard. On the second day of hearing both representatives submitted case law and made submissions to the Tribunal on the matter.

### **Determination on Preliminary Issue:**

As the T1A form completed by the claimant is not a statutory form and the body of the claim submitted clearly stated the intention to bring a claim under the Unfair Dismissals Acts, the Tribunal informed the parties that it was allowing the form T1A to be amended to include a claim under the Unfair Dismissals Acts, 1977 to 2007.

Accordingly, the claimant withdrew her claim under the Redundancy Payments Acts, 1967 to 2007. The claimant was also satisfied that she had been paid her entitlements under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and the Organisation of Working Time Act, 1997 and withdrew her claims under these Acts.

### **Substantive Issue:**

#### **Respondent's Evidence:**

The Human Resources Manager gave evidence that the company was performing well until a massive downturn in the economy during 2008 and 2009. The respondent's stores suffered a reduction in sales and footfall numbers. Given initial figures it appeared that a number of stores could close including the Carlow store. The claimant worked in this store as a supervisor on a 40-hour contract.

The respondent company was forced to examine how it could operate its stores in a more productive manner and the overall business was examined as part of this process. It was decided to try and improve the performance of the stores. As a result in May 2009 the company reached the conclusion that the service element of its business needed to be improved. For example, the company realised that lunchtime was busy in the store but a lot of staff were on their lunch breaks during this time. A time and motion study had been carried out on all of the stores and an ideal template for each store was produced. The finding was that forty-hour contracts were not conducive to the respondent's business or to its productivity and efficiency.

A consultation meeting was held with all of the store managers about the possibility of staff working on a "zero-base payroll" which would allow store managers to allocate hours to best suit the business needs. This meant a reduction in hours for some staff and a more flexible working arrangement. The Human Resources Manager stated that it was not possible for the company to offer employees a three-day week as this would not provide the company with flexibility, which the business needed.

During cross-examination the Human Resources Manager confirmed that the claimant had a 40-hour contract prior to this and that the claimant's contract did not include a clause through which the company could reduce her hours.

The Store Manager of the Carlow branch gave evidence that sales declined dramatically during 2008 and 2009 and she was fearful that the branch would close. As Store Manager she did not have a lot of flexibility when it came to rostering staff as at times too many staff were working and at other times too few staff were working. Two staff members had 40-hour contracts and coupled with the other employees who had a high number of hours, morning and lunch breaks had to be managed into the roster. The Store Manager also found that she was restricted in rostering for the busier weekend trade.

After she had been briefed on the flexible contracts the Store Manager met with each member of staff on an individual basis. Her first meeting with the claimant was on 1<sup>st</sup> May 2009 and she outlined to the claimant the company's position about the flexible contracts of between 20-24 hours. The claimant made it clear on that date that she did not want to change to a flexible contract.

The Store Manager again met with the claimant on 21<sup>st</sup> August 2009 and again the claimant confirmed that she did not want the flexible contract. The Store Manager held a number of formal consultation meetings with the claimant throughout September and October but the claimant's position remained the same. The claimant did enquire about the redundancy package offered and the Store Manager provided the claimant with this information. She also explained to the claimant that if the store's performance improved then the store would be allocated extra hours and that she would keep the claimant in mind. The claimant had made it very clear to the Store Manager that due to personal circumstances she could not afford to take a position with only 20 hours work. The claimant subsequently chose to accept the redundancy package offered and her exit interview was conducted on 6<sup>th</sup> November 2009.

The Store Manager added that having employees on flexible contracts has made a difference as the flexible contracts of 20-24 hours allows the manager to send staff home after 20 hours if they are no longer needed in the store.

Claimant's Evidence:

The claimant gave evidence that she held a 40-hour supervisor's contract during her employment with the respondent company. She confirmed that the formal consultations with the Store Manager commenced on the 15<sup>th</sup> September 2009. The claimant was informed that the company no longer required longer contracts such as her 40-hour contract. The claimant was offered a 20-24 hour flexible contract or redundancy. The claimant stated that at all times she made it clear that she did not want to accept redundancy but that she did not want her hours to be reduced. The claimant put forward a number of ideas as alternatives to the flexible contract and although her ideas were passed to head office her choice remained the same- accept the reduced hours contract or be made redundant. The claimant gave evidence of her loss.

**Determination:**

Having carefully considered the evidence adduced at the hearing, the Tribunal finds that there was a decrease in the respondent's business and that there was a requirement to restructure in an effort to secure the future of the business. The Tribunal finds that there was a genuine redundancy and the claimant was dismissed by reason of redundancy. Accordingly, the claim under the Unfair Dismissals Acts 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

(CHAIRMAN)