

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE-*Appellant*

UD1075/2010

against

EMPLOYER-*Respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. S. McNally

Members: Mr. D. Hegarty

Mr. D. McEvoy

heard this claim at Cork on 25th August 2011

Representation:

Claimant: Mr. Val Turnbull. Solicitor, 33 Washington Street West, Cork

Respondent: Mr. David Gaffney, Coakley Moloney, Solicitors, 49 South Mall, Cork

Respondent's case

The business of the respondent was founded in 1955 and has operated from 75 Main Street since then. Approximately 25 years ago the respondent took over the business of the "P M" at 74 Main Street. Notwithstanding the fact that the claimant's contract of employment, pay slips and P60's showed the employer as being R H L, the respondent stated that the claimant was primarily employed in the P M. However the respondent did acknowledge that the claimant occasionally worked in R H, normally to cover for other employees. Therefore when the P M was closed down the respondent had no option but to make the claimant redundant.

There had been a reduction in pay and hours for all employees of R H L prior to the claimant being made redundant and the respondent could not offer her any hours in R H. The claimant was not trained to carry out some of the jobs in R H. Another employee with less service than the claimant had been working in the P M for some time before it closed but because she had previously worked in R H she was kept on to work there.

The claimant was the only person to be made redundant when the Pottery Shop closed down. However another two employees have been let go since then.

Claimant's case

The claimant commenced employment with the respondent in October 1997. She was assigned to the P M but after a while she would rotate with staff in R H. Prior to being made redundant the claimant had worked three consecutive Saturdays in R H and regularly covered other staff for breaks.

A contract of employment together with pay slips and other documentation was shown to the Tribunal and all off these documents cited R H L as the claimant's employer. The claimant stated that she was already trained in some aspects of the work in R H and was confident that she could have fitted in to there quite easily.

It was the claimant's contention that she was part of the overall staff of R H L and that she should not have been made redundant ahead of staff with less service than her. There were 5 employees with more service and 14 with less service than the claimant.

Since being made redundant the claimant has sought alternative employment. However no documentary evidence was adduced to support this. In November 2010 the claimant commenced employment elsewhere but this only lasted 3 weeks and was on a 3 days per week basis. The claimant has been offered another job, which is to commence in September or October 2011.

Determination

Having considered the evidence adduced the Tribunal is satisfied that a genuine redundancy situation did exist within the respondent company at the time of termination of the claimant's employment. The Tribunal is further satisfied that the claimant was entitled to be considered as part of the overall work force of the respondent.

However there was insufficient evidence adduced to satisfy the Tribunal that the respondent carried out a full assessment of the claimant's capabilities or that the selection criteria outlined by the respondent, was applied to the claimant.

Accordingly the Tribunal finds that the claimant was unfairly dismissed due to her being unfairly selected for redundancy. Taking into account the lack of evidence in relation to the claimant's efforts to mitigate her loss and in all the circumstance the Tribunal awards the claimant €1,000.00 under the Unfair Dismissals Acts, 1977 to 2007. This award is over and above any payment already made to the claimant in respect of a redundancy lump sum.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

