

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE *-claimant*

CASE NO.
UD223/2010
RP445/2010

Against

EMPLOYER *-respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms J. McGovern B.L.

Members: Mr. A. O'Mara
Mr P. Trehy

heard this claim at Dublin on 27th April 2011
and 12th September 2011

Representation:

Claimant: Mr. Anthony Byrne B.L. instructed by John Devane Solicitors,
7 Quinlin Street, The Crescent, Limerick

Respondent: Ms Elizabeth Mara, Sheeran O'Riordan, 74 Pembroke Road, Dublin 4

The appeal under the Redundancy Payments Acts 1967 to 2007 was withdrawn at the outset.

Respondent's Case

The C.E.O. (SmcH) of the respondent gave evidence. The respondent's business is monitoring broadcast and press media on behalf of external companies. SmcH gave evidence of the downturn in business due to both the economy and the advance in technology in the sector. The claimant accepts the downturn in business. The respondent's staff has been reduced from 42 to 17. The respondent business was split into broadcast and press; the claimant worked as a supervisor in the press area and also did reading work.

In February 2009 SmcH spoke to the claimant and explained the seriousness of the situation and that there would be 'cuts' in the near future. The claimant was informed her working hours were being reduced from three days to two days per week. A letter to that effect was issued to the claimant dated the 16th of March 2009.

There was a meeting in July 2009, which the claimant was involved in, held in order to reduce

the hours worked by the staff on the weekend shift. A further meeting on the 17th of July was held to inform all staff of the likelihood of redundancies. The seriousness of the situation was explained to the claimant and she was asked would she consider working a five-day week as the respondent needed a 5-day supervisor. The claimant declined this offer. The claimant was also offered weekend work which she declined.

In September 2009 a new service was launched that further cut labour requirements by 20-30 hours per week. At this point the broadcast department was outsourced and save two positions the staff were let go. By October 2009 the respondent had a €100,000.00 loss and had to make more redundancies. It was clear from the conversation with the claimant in July that she was unwilling to work 5 days. The respondent needed a supervisor for 5 days not the 2 days the claimant was willing to work. After looking at everyone's role it became apparent to the respondent that the claimant's role and two others had to be made redundant.

On the 29th of October 2009 a meeting was arranged with the claimant where she was informed that there was no requirement for a 2-day supervisor and that her position was being made redundant. The claimant did not accept her redundancy payment.

The weekend supervisor was employed on a trial basis. He worked the weekend shift, which was Thursday to Sunday. There was a crossover on Thursday and Friday with the claimant and the weekend supervisor, but the claimant worked mornings and the weekend supervisor worked in the afternoons. An employee was dismissed prior to the claimant being made redundant; this position was not offered to the claimant as she had already declined the offer of additional work in July. The respondent accepts that there were no records or minutes of any of the meetings with the claimant including the meeting where she was notified of her redundancy.

On the second day of hearing the Head of Operations (SB) gave evidence. SB gave evidence on the redundancies that occurred due to the advance in technology and the outsourcing of the broadcast department.

In December 2008 a management meeting was held with the claimant, the CEO, the respondent owner, SB and the accountant in attendance. The sharp decline in business was discussed. A further meeting was held in January 2009 to discuss the figures and the claimant and SB were asked to come up with cost saving measures. In February 2009 at a management meeting it was decided to reduce the working hours of staff instead of making redundancies. As the claimant was the press supervisor she had an input into which staff hours were reduced. Following a staff meeting a letter was issued to the claimant confirming her hours were being reduced from 3 days to 2 days per week. The management meetings continued from March to July discussing the state of the business.

The claimant had previously been asked to become a full-time supervisor; this offer was declined as she said she would lose her Social Welfare benefit if she did the extra hours. As a result of the claimant declining the offer of extra hours, a member of staff from the weekend shift was promoted to weekend press supervisor on a trial basis in April 2009. At the meeting of the 17th of July with the claimant, SB, the respondent owner and the CEO, the claimant was asked to take on the extra hours of a weekend supervisor. The claimant again said she was not interested in doing any extra hours.

The weekend supervisor was promoted on a trial basis. The situation did not work out; the claimant was aware and involved throughout the process and was aware he asked for voluntary

redundancy instead of reverting back to his old position. The weekend supervisor role was Thursday to Sunday.

September 2009 saw a new programme come online that further decreased the working hours necessary to complete the respondent's work. The respondent owner made it clear to the claimant that there would have to be changes and redundancies would be on the cards. Due to the viability of the Broadcast area it was decided to completely outsource this department. This left SB with more time as her role in the Broadcast department was now gone. SB was not involved in the claimant's redundancy. SB now shares the role of press supervisor with an existing press staff member. An existing staff member with SB's supervision had completed the claimant's role on the days she was not working.

The weekend supervisor role was Thursday to Sunday. Both the claimant and the weekend supervisor were in on Thursdays and Fridays but the claimant worked mornings and the weekend supervisor worked evenings.

The respondent owner (WmcH) gave evidence. WmcH had worked with the claimant in a previous company and knew when he employed her, that due to health reasons she was not available to work full-time. WmcH maintains that the claimant was aware that there was a possibility that she could be made redundant although he did not personally inform of this. The claimant was not given notice of the redundancy meeting or offered representation at the meeting. The decision to make the claimant redundant was taken before the meeting. The claimant did not inform WmcH that she wanted to step down from the supervisor role when the weekend supervisor was promoted.

Claimant's Case

The claimant commenced employment as a part-time reader and supervisor. The claimant worked Monday, Thursday and Friday. In March 2009 the claimant's working week was reduced to 2 days; Thursday and Friday.

In December 2008 at a management meeting the claimant was informed that the respondent needed a 5 day supervisor; the claimant declined this offer for health reasons. The offer of extra work was not made in writing. The claimant was never offered the evening shifts for Thursday and Friday. The claimant did not attend a meeting in July or was offered any additional work in July 2009. When the weekend supervisor was promoted in April 2009 the claimant stepped back as supervisor and only did reading work. The claimant said she would still be available to give any guidance and support to the new supervisor. The claimant's salary was not affected when she stepped down as supervisor. The respondent owner informed the claimant that she was no longer a supervisor.

The claimant did not attend any management meetings post December 2008; the meeting in January 2009 was to discuss the promotion of the weekend supervisor. The claimant did not attend any 'cost-cutting' meetings, her advice was asked on cost-cutting as she had been a supervisor. The claimant was not aware of any redundancies in the press area except one role that had become obsolete. The claimant did not receive notice that her position might be made redundant; the first notification was at the meeting when she was informed of her redundancy.

The claimant gave evidence of her Loss and her attempts to mitigate her loss.

Determination

The Unfair Dismissals Acts impose a burden on the respondent to show that dismissal was not unfair. The Tribunal determine that a genuine redundancy situation existed within the respondent but is in no doubt that fair procedures were not followed by the respondent in effecting the dismissal of the claimant. The Tribunal further finds that the claimant did not mitigate her loss to an adequate extent.

Having regard to Section 7. 2 (a) and (b) of the Unfair Dismissals Act 1977 which states that,

Without prejudice to the generality of subsection (1) of this section, in determining the amount of compensation payable under that subsection regard shall be had to,

- (a) the extent (if any) to which the financial loss referred to in that subsection was attributable to an act, omission or conduct by or on behalf of the employer,
- (c) the measures (if any) adopted by the employee or, as the case may be, his failure to adopt measures, to mitigate the loss aforesaid, and

The Tribunal find that the claim under the Unfair Dismissals Acts 1977 to 2007 succeeds and awards the claimant €2,500.00 in compensation.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)