

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM OF:

CASE NO.

EMPLOYEE – *claimant*

UD1026/2010

against

EMPLOYER – *respondent*

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. M. Levey BL

Members: Mr. M. Flood  
Mr. M. O'Reilly

heard this claim in Dublin on 3<sup>rd</sup> October 2011

Representation:

Claimant: Mr Seán O Síothcháin BL instructed by Ms Emer Murphy, Eamon Murray & Company, Solicitors, 6/7 Sheares Street, Cork

Respondent: Ms. Fiona Higgins, IBEC, Confederation House, 84-86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

**Respondent's Case**

(MA) the Operational Director gave evidence. In 2005 the respondent had a very large turnover of staff up to 40% at one stage. His job was to recruit managers for the different branches of the business in Ireland, and those managers would then recruit staff for each individual branch. It got so bad that he got approval from (PA) the Managing Director to appoint a HR Manager to this job and to ensure legislation was adhered to. The claimant was employed and was charged to visit each branch at least once every thirteen weeks.

From an operational point of view, he wanted to appoint two Regional Managers splitting Ireland east and west. He was told by (PA) that they would have to be existing full time managers. He got approval for the two posts to be based in Cork and Wexford. They were given responsibility for five sites each including their own, and were required to visit one site a

week.

As the Regional Managers began visiting each site, and ensuring that the policies were being adhered to, they became a point of contact for the managers of those sites. As a result this lightened the workload of the HR manager. The Regional Managers were reporting to the HR Manager who was then reporting to (MA). It became apparent very quickly that the role of HR Manager was becoming redundant. In January 2009, (MA) discussed this with (PA). The market had changed and they had a good retention of staff and it became easier for managers to look after staff as a result.

In December 2009, (MA) agreed with (PA) to make the HR Manager role redundant but decided to wait until after Christmas to do so. On the 22<sup>nd</sup> January 2010, he called the claimant into his office and told her that due to the Regional Managers taking her duties the role of HR Manager was being made redundant. He told the claimant he would give her time to find a new job. Up to that time he had a very good relationship with the claimant.

On the 25<sup>th</sup> January, he met with the claimant to discuss the redundancy package. The claimant had negotiated previous packages for other employees, but when he offered her the same she was not interested. He topped it up but she still was not interested. She then said she felt sick and wanted to go home. She told him the redundancy was not work related but was because of her pregnancy. He then received a letter from her solicitor.

Under cross examination (MA) said that any other work done by the claimant for the family business would have been on a once off basis. He said they looked at making the Regional Managers redundant as an alternative but decided against that.

(PA) is the Managing Director. In 2005 the business was doing very well. He discovered that head office was dealing with a lot of HR issues and they were stretched to the limit. He felt they needed a HR Manager to deal with this. When the claimant was employed he asked that she review all employees as managers were taking the easy option.

They had a very good manager in Cork who wanted to take on more responsibility. (MA) came to him and said they could give him a Regional Manager role for the west of Ireland and give the same role to a manager in the east. This was agreed and both were employed to look after five locations each. In January 2009, he discussed the HR Manager role with (PA). On the 16<sup>th</sup> December he had a meeting with (MA). The Regional Managers had bedded down and the number of calls to head office had reduced. He said to (MA) that they could not justify keeping the role of HR Manager and that they would have to bite the bullet. (PA) said he was fond of the claimant and said leave it until after Christmas.

The staff in head office receive their annual review each January normally before the 22<sup>nd</sup> which is the first pay day. They were changing electrical, telephone and other contracts to reduce costs. He told (MA) to tell the staff there would be no increase in pay that year. On the 22<sup>nd</sup> of January 2010, he asked (MA) where he was with the claimant. (MA) told him he had not told the claimant yet and he told him to get on with it.

Under cross examination (PA) said they had a policy of covering each other and did not use temps. He said the decision to make the claimant redundant was made on the 16<sup>th</sup> December 2009, and that there was no alternative role for the claimant in the business. He heard for the first time on the 25<sup>th</sup> January 2010, that the claimant was pregnant. He did not know the

claimant was pregnant until she walked out of the office and (MA) told him it had come up during the redundancy conversation.

### **Claimant's Case**

The claimant began working for the respondent in 2005. When she first arrived, she was trained on the payroll so there would be enough cover. She travelled one day a week to the branches dealing with in-house matters. She sometimes stayed overnight and she worked with the Regional Manager in Northern Ireland on issues of HR. The Regional Manager was to liaise with her. She had no idea her role was to be made redundant. She was still traveling and doing her duties. New sites were opening.

On the 11<sup>th</sup> January 2010, she told (MA) that she was pregnant because they had a good relationship. They talked about her pregnancy and future hospital visits. On the 22<sup>nd</sup> January he called her into his office and told her the role of HR Manager was being made redundant. She asked (MA) about notice and he said until the end of February. She could not understand why she was not giving the heads up about the cost cutting. The following Monday, (MA) put an offer of redundancy to her and asked what she thought. She told him she was unfairly selected, felt sick and left. She did not receive any phone calls following that meeting.

Under cross examination the claimant said she reported to (MA) and he had the final call on issues. She accepted cost reductions were put in place but did not accept she was doing less travel.

### **Determination**

Having carefully listened to the evidence adduced by both parties the Tribunal is satisfied that the claimant was dismissed by reason of redundancy. When the respondent created the two Regional Manager posts, they were not to know, the economic circumstances would change so quickly. The managers in the branches began to contact the Regional Managers to deal with personnel issues and as the downturn emerged the turnover of staff abated significantly.

On the face of it, the decision to make the claimant redundant was taken prior to her notifying the respondent of her pregnancy. The tribunal accepts that this decision was not as a result of her pregnancy but was for genuine reasons. While the respondent failed to explore other alternatives, the redundancy was genuine. The Tribunal finds that the offer of €15,000 was fair and reasonable from the respondent.

Accordingly the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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