

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE - *claimant*

UD231/2010
WT111/2010

against

EMPLOYER

- first named respondent

EMPLOYER

- second named respondent

under

**ORGANISATION OF WORKING TIME ACT, 1997
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath BL

Members: Mr. N. Ormond
Mr T. Brady

heard this claim at Dublin on 21st June 2011

on 8th November 2011

on 9th November 2011

Representation:

Claimant(s) : Ms. Eithne Reid O' Doherty BL instructed by:
J.C. Hoban & Co, Solicitors, Suite 114, The Capel Building, Marys Abbey,
Dublin 7 – on first day of hearing

Ms. Eithne Reid O'Doherty BL instructed by:
Keans, Solicitors, 2 Upper Pembroke St, Dublin2 - on second and third days of
hearing

Respondent(s): Mr. Boyce Shubotham, William Fry, Solicitors, Fitzwilton House, Wilton Place,
Dublin 2 - *for first named respondent*

Mr. David Farrell, IR/HR Executive, IBEC, Confederation House,
84/86 Lower Baggot Street, Dublin 2 - *for second named respondent*

Preliminary Issue

During the course of the hearing the Tribunal determined that the second named respondent has no case to answer and was released from the proceedings.

Respondent's Case

The Distribution Manager for the respondent company gave evidence. The claimant was employed as a General Assistant in the warehouse in Santry. The claimant was employed as a General Operative working on the night shift.

In November 2008 management from the respondent met with the union to discuss the closure of the Dublin Distribution Centre in Santry. A new Stores Services Centre (SSC) was being built in the respondent's head office in Nottingham. The Distribution Centre would be replaced with a smaller Cross Dock Centre (CDC). The location of this new centre was not confirmed. The "reasonable travelling distance" for the employees to make to the new centre would determine how many job opportunities would be available at the centre. There could be potential redundancies and this would be phased in over an 18-month period. The lease on the Distribution Centre premises was to expire in 2010.

A learning centre was set up on site to train staff and a 3-day "taster session" was available to staff to see if they wanted or were suitable to transfer there. An Implementation Co-ordinator was also available to seek any other opportunities for staff. A briefing was held in January 2009 and all employees were given an employee information pack. It was a very detailed document with all the information the company could give and there was also a question and answer section for the employees to complete. There was then a consultation process. Some volunteered to take redundancy.

On April 2nd 2009 the claimant was informed by the witness that:

*"Based on your length of service it appears that you will leave the business through redundancy if no suitable alternative role/s is/are found on week ending 27th June 2009. **Please be aware that this is subject to change and is not the Company's final decision.**"*

She was invited to a consultation meeting on 7 April 2009 but it never took place on that day. The claimant's consultation took place with the witness's colleague (BR) on 28 May 2009. She was given the details of her redundancy and seemed happy with it. She never appealed this decision. On 4 June 2009 she attended a meeting in order for her notice of redundancy to be served. She again never appealed the decision. On cross-examination the witness told the Tribunal that 18 employees of the first named respondent moved to the second named respondent.

Claimant's Case:

The claimant gave evidence. She commenced employment in August 2003 as a General Assistant picking stock and loading it for delivery. She worked the night shift Monday to Friday and every second week she worked weekends.

In January 2008 staff were informed the company was to move premises. She was given an information pack but found it puzzling and "very dictating". She did not volunteer to

move premises as she did not know where it would be located. Her union representative recommended that she sign the form. On 28 May she spoke to the respondent's witness to clarify where the move was to be. She was three months pregnant at the time. She informed him that she wanted to apply for a position with the second named respondent who would be located in the Santry premises but was told they were all filled.

On 25 May 2009 she met with (BR) to consult about her redundancy. He told her the job was to move premises and the shift would change to a day shift. She told (BR) she wanted a job and wanted to know where the location. She said that the matter was very unclear to her. She spoke to her union representative also.

On 4 June 2009 she met (BR) and another colleague. She told the Tribunal that she did not want to sign the redundancy form. She said she would have stayed had she been asked.

On cross-examination she stated she was aware of other local jobs posted on the notice board but did not apply. She did not appeal the decision.

Determination

The Tribunal has carefully considered the evidence adduced in the course of this hearing. The Tribunal is satisfied that the claimant was given every opportunity to put herself forward for the jobs which the respondent company was retaining as part of their overall restructuring of the workplace. The claimant opted not to engage with the process at the time that the respondent company was dealing with all of the staff for the purpose of assessment for redundancy or retention. The claimant only changed her mind after the process had been completed and in circumstances where positions had been filled and redundancies had been notified. Her claim under the Unfair Dismissals Acts 1977 to 2007 fails.

As no evidence was adduced in respect of her claim under the Organisation of Working Time Act, 1997, this claim also fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)